United States Court of Appeals for the Second Circuit



APPELLANT'S BRIEF & APPENDIX

76-1449

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,



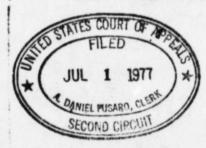
-vs.-

CHARLES P. GREZO, JOSEPH D' GOSTINO, SAMUEL EBARE and RICHARD MICHAEL BEACH

Defendants-Appellants

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK

BRIEF AND APPENDIX FOR APPELLANT - BEACH



DAVID B. WEINSTEIN, ESQ.
Attorney for DefendantAppellant, Richard Michael
Beach
Office & P.O. Address
410 Metcalf Plaza, P.O. Box A
Auburn, New York 13021
Tel: (315) 253-4444

MICHAEL A. WINEBURG, ESQ. and CARL CANNUCCIARI, ESQ., of Counsel.

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ISSUES PRESENTED

- 1. Whether the Government's proof was insufficient to support the verdict that appellant participated in an illegal gambling business as one who conducted, financed, managed, supervised, directed or owned said business?
- 2. If the Court reverses the conviction against any of the appealing defendants by reason of insufficiency, should then the convictions against all appellancs including Richard Michael Beach be reversed and the indictments dismissed?

STATEMENT OF THE CASE

Nature of the Case, Course of Proceedings and Dispostion

The appellant, Richard Michael Beach, was initially charged with violating the Federal Gambling Statute, Section 1955 of Title 18, United States Code, and with conspiracy to violate said Section.

After a jury trial before Hon. Lloyd F. MacMahon, Jr., United States Judge, Southern District of New York sitting by designation in Northern District of New York, appellant Beach was convicted of the substantive count but acquitted of conspiracy. The other defendants on trial with Beach were convicted of other counts in the indictment.

On September 17, 1976, appellant Beach was sentenced by Judge MacMahon to a term of one year and one day, the longest sentence imposed in this case. This appeal by the defendant Beach was timely filed by the filing of an original and four copies of a notice of appeal on September 28, 1976 in forma pauperis with the United States District Court, Clerk, Northern District of New York.

Statement of Facts

In the opening statement by the Government, U.S. Attorney Fisher stated to the Judge and jury that the Government intended to prove that Beach has a managing and directing role in the gambling organization (Tr. p.25, App. p.10).

The first witness called by the prosecution, Monica Simms, testified about her involvement with the defendant Samuel Ebare. No mention was made of the appellant Beach. Further, numerous other witnesses were called by the prosecution to testify against the other defendants; however, none of them had anything to say about involvement by Beach in any illegal gambling scheme.

The first witness called who had any contact with

Beach was James Colloca. He stated, among other things, that

Beach approached him four or five times during the period of the

alleged gambling operation to collect money from him. (Tr. p.118,

App. p.11). Colloca stated that, during the same period of

time, he was involved in other gambling schemes, had subsequently

had four heart attacks, was under medication, which impaired his

recollection and ability to testify, and had received immunity

to testify in this case. (Tr. p. 121, App. p.12).

The only other non-Government employee who had any knowledge of Beach was James D. Keller. Keller acknowledged that he was acquainted with Beach. (Tr. p.159, App.p.13.)

Further, he stated that in January, 1975, he met with Beach and Samuel Ebare about a debt he owed Ebare. However, Keller testified that Beach was not a party to the conversation and said no more than hello to Keller. (Tr. p. 243, App. p. 14). As the discussion between Keller and Ebare continued, Beach went across the room. (Tr. p.243, App.p.15). Further, Keller testified that Beach had never collected any monies from him, provided him with line information, or in any other way involved himself in

the gambling scheme of Ebare. (Tr. pp.242-245, App. pp. 13, 14, 16, 17). It was Keller's testimony that Beach and Ebare were friends; sidekicks. (Tr. p. 244, App. p.16).

The next witness called by the government, Samuel Visconti, testified at length about his involvement with the Ebare organization. However, under cross-examination, he testified that he did not know the appellant Beach, never paid him any money, never saw him with Samuel Ebare, or had any dealings with him. (Tr. pp. 280-281, App. pp. 18-19).

F.B.I. Agents were called by the government to testify concerning the roles of defendants D'Agostino, Grezo, Camerano and Czerwinski. Again, these agents were silent as to the involvement of the appellant Beach in any gambling operation.

Except for Special Agent Holmes, the only other members of the F.B.I. who had any contact with Beach were Agents O'Brien and Looney. Agent O'Brien, at some time during the investigation of the Ebare organization searched appellant Ebare's automobile. Ye stated that Beach was a passenger in the automobile; the only "evidence" seized consisted of outdated football sheets, located under the seat on Samuel Ebare's side of the vehicle.

(Tr. pp.285, 292-93, App. pp. 20-22).

Next Agent Looney testified that on January 20, 1975, he had the occasion to participate in the execution of a Magistrate's search warrant upon the person of the appellant Beach. The items seized during the search consisted of an address book, scraps of paper with names of teams on them, sport journals and sheets and \$4.00 in cash. (Tr.pp.295,299,300-02, App.pp 23-27).

After Agent Looney, Leon Cook was called by the Government. He, as did Samuel Visconti and James Keller, testified as to his extensive dealings with the defendant D'Agostino. Again, Leon Cook was silent as to Michael Beach. In fact, he testified that Beach never collected any money from him and, to his knowledge, had no connection whatsoever with the defendant D'Agostino. (Tr. p. 322, App. p. 28).

The key witness called by the Government was William L. Holmes, a Special Agent with the F.B.I., assigned to the gambling unit of the F.B.I. Laboratory in Washington, D.C. He testified as to his extensive experience in gambling investigations over the past seven years and his examination of thousands of items of gambling paraphernalia and records.

Special Agent Holmes further testified that he examined and analyzed the transcripts of the tapes which were used by the Government at trial. In the course of his testimony, he succinctly described the roles of each of the members of the gambling organization. When asked about the role of the defendant Beach, the only role testified to was that Beach held a position of trust in the organization. (Tr. p. 360, App. p.29). He further admitted that he based his opinion on the fact that Beach received a bottom figure for an account and also the amounts wagered on both teams in a contest. At no time did Special Agent Holmes testify that Beach held any type of managerial, supervisory or functionary position with the organization.

At the trial, the government played tapes of conversations of the defendants. Out of the hundreds of pages of transcript of conversations that were played for the jury, Beach was only involved in eight or nine conversations.

MARK HAISO BUS

SOUTHWORKERLINGLES

ARGUMENT

POINT I

THE GOVERNMENT'S PROOF WAS INSUFFICIENT TO SUPPORT THE VERDICT THAT APPELLANT PARTICI-PATED IN AN ILLEGAL GAMBLING BUSINESS AS ONE WHO CONDUCTED, FINANCED, MANAGED, SUPERVISED, DIRECTED OR OWNED SAID BUSINESS.

Assuming that a gambling operation within the purview of 18 U.S.C. .955 (1970) was proved, there was insufficient evidence to provide a nexus, necessary to convict, between Beach and that operation. The evidence against Beach, viewed in the light most favorable to the Government, fails to reach the level essential to a conviction.

The Government could never quite define a role for Beach. In its opening statement, the United States Attorney promised the jury that the Government's proof would show Beach to have a "managing or directing role." (Tr. p.25, App. p.30). By the time the proof reached the Government's expert, who would collate the tape transcripts, testimony, and other evidence to connect the alleged participants into a proscribed gambling operation, Mr. Beach's position had been reduced to the nebulous category of one occupying "a position of trust." (Tr. p.360, App. p. 29). By summatior, precision had not yet emerged:

Beach was characterized as one of the "two higher bosses" of the operation (Tr. p.707, App. p.31); "down the line in the hierarchy" of the operation (Tr. p.724, App. p. 32); and a "go-between." (Tr. p.729, App. p. 33).

The supporting testimony was equally non-conclusive.

Of the witnesses testifying from direct knowledge or observation,

only two could speak of Beach. James Colloca, who testified before the Grand Jury, as well as during trial, admitted that his memory had been affected by drugs and lalth problems (Tr. pp.113, 121-22, App. pp. 34-36); that he had been granted immunity; and that he was a convicted gambling felon. His contact with. Samuel Ebare and others, as testified to, was, more or less, regular; yet his contact with Beach was at best sporadic. He handed Beach some money on four to six occasions during the 22 months of the alleged gambling operation.

One other person was able to testify to direct contact with Beach. James Keller, who was acquainted with Beach, testified to a meeting with Ebare, where Beach as present. (Tr. p.159, App. p. 37). Beach's conversation was limited to one word: "Hello." (Tr. p.243, App. p. 38). Beach never gave Keller line information; never collected from Keller; and never discussed gambling with Keller. In fact, Keller's characterization of the Ebare-Beach relationship was one of friendship--they were sidekicks. (Tr. pp. 243-244, App.pp.39-40.)

It is against this background that Special Agent Holmes, the F.B.I. expert in analysis and investigation of gambling operations, summoned by the U.S. Attorney to put semblance into the unconnected testimony and other evidence to show how the "organization" fit together, could not define Beach's role in the operation as anything more than as a person of trust of the organization. (Tr. p.360, App.p.41). Yet he was able to testify accurately as to the specific job functions of the other four defendants in the operation of the gambling

business, to wit: Joseph D'Agostino was a relay or pickup man or runner who accepted wagers, controlled the dispensing of line information and who regulated collections from and payoffs to customers (Tr. pp.355, 359, App. pp. 42-43); Charles P. Grezo, one who "conceivably" could be a bookmaker or writer, one who received line information, placed lay-off wagers, made line changes and who gave advice to D'Agostino on some line changes (Tr. pp.360-361, App. pp.44-45); Raymond Czerwinski, one who is "at least" a writer, who received line information from D'Agostino, who relayed wagers to D'Agostino, who received assistance from D'Agostino regarding disputes between a bettor and himself, and one who always made collections (Tr. pp.361-62, App. pp. 45-46); and Samuel L. Ebare, described as the manager of the business who made policy decisions (Tr. p.357, App. p.47).

This proof did not meet the minimum standard necessary for a conviction under 18 U.S.C. §1955. Clearly the only illegal area of participation conceivably relevant to Beach's activities was "conduct[ing]." In this connection, the parameters of 18 U.S.C. §1955 have been discussed by this Court.

See, e.g. United States v. Todaro, 550 F.2d 1300 (2d Cir. 1977);
United States v. Becker, 461 F.2d (2d Cir. 1972), vacated and remanded on other grounds, 417 U.S. 903 (1974). The United States Congress has stated:

Although the term "conduct" is nowhere defined in the statute, the authors simultaneously-enacted 18 U.S.C. §1511, which was to parallel Section 1955 intended "conduct" to mean any participation in the operation of a gambling business. H.R. Rep. No. 91-1549, 91st U.S. Code, Cong. and Admin. News pp. 4029-30.

It is evident, however, that the words "any participation in the operation of a gambling business" or the term "conduct" are not a carte blanche upon which convictions under §1955 can be written.

The Courts of Appeals having an opportunity to examine §1955 have recognized that a participant's level within the organization is not controlling. Yet all of these Courts, whether upholding or reversing convictions, have enunciated, at least implicitly, a stringent standard. To be convicted under \$1955, a person must perform substantial services to the operation, United States v. Box, 530 F.2d 1258 (5th Cir. 1976), must fulfill a necessary function within the operation, United States v. McCoy, 539 F.2d 1050 (5th Cir. 1976), and must have an interest in the welfare of the business. United States v. Leon, 534 F.2d 667 (6th Cir. 1976). There must be an interdependence of personnel, fusing into a common operation. United States v. Guzek, 527 F.2d 552 (8th Cir. 1975). And the goals and functions must be evidenced by continuous, systematic, regular, consistent, frequent, and substantial services and activity. United States v. Box, supra; United States v. Guzek, supra; United States v. Schaeffer, 510 F.2d 1307 (8th Cir.), cert. denied 421 U.S. 978 (1975); United States v. Thomas, 508 F.2d 1200 (8th Cir.), cert. denied 421 U.S. 947 (1975).

Conversely, Courts have repeatedly emphasized that a conviction will not lie against every person who has a marginal or tangential connection with an illegal gambling operation. The simple exchange of line information by a bookmaker with another independent bookmaker is insufficient. United States v.

Leon, supra. The accepting of occasional lay-off bets together with being a regular customer of a bookkeeper is insufficient.

United States v. Box, supra. Isolated and casual lay-off bets and the occasional exchange of line information may not be sufficient to establish that one bookmaker is conducting or financing the business of a second bookmaker. United States v.

Thomas, supra. The receiving or transmitting of line information alone or occasional collaboration in selling the line is insufficient. United States v. McCoy, supra. In short, isolated, casual or negligible activity or connection will not be upheld: an occasional "gambol with the gamblers," United States v. Box, supra at 1268, is not a Federal crime.

This Court, shortly after Beach's conviction, confirmed that proof only of marginal connection with a gambling operation will be insufficient to sustain a conviction. In United States v. Todaro, 550 F.2d 1300 (2d Cir. 1977), the defendant supplied line information to the gambling operation nine or ten times. The Court, noting that Todaro's role was "negligible" and "insignificant," 550 F.2d 1302, held that "[I]nadequate proof was offered that Todaro was one who conducts, finances, manages, supervises, directs, or owns" an illegal gambling operation. Id.

Like Todaro, Beach's activities and participation in the alleged Ebare gambling operation were insignificant. During the almost two year period of illegal gambling activity, witnesses testified to at most seven contacts between Beach and others. One of those, with Keller, resulted in testimony confining Beach's participation to observation and companionship to a friend and sidekick. The others, with Colloca, indefinite as to numbers, frequency, dates and amounts received, may hardly be elevated to the standards necessary to uphold Beach's conviction. The other Government evidence relating to Beach, including tapes and search results, does not raise the proof to such standards. That Beach was Ebare's friend cannot be disputed. That he was trusted by Ebare is not contested. But the "position of trust" was not tantamount to Beach's participation in a gambling operation in any of the categories spelled out by Congress.

POINT II

IN THE EVENT THAT THE CCNVICTION AGAINST ONE OF THE OTHER APPEALING DEFENDANTS IS REVERSED FOR INSUFFICIENCY, THEN THE CONVICTIONS AGAINST ALL APPELLANTS INCLUDING RICHARD MICHAEL BEACH, SHOULD BE REVERSED AND THE INDICTMENT DISMISSED.

This Court's decision with respect to appellant Grezo should affect the other appealing defendants, Ebare, D'Agostino and Beach. Because of this Court's decision in United States v.

Todaro, supra, which reversed the conviction of one whose only involvement in an illegal gambling business contemplated by \$1955 was his conduct in providing "line" information to the operators of that business, the non-appealing defendant, Louis M. Camerano, should not have been counted as one of the necessary five defendants who violated the statute in question. Without Camerano, only five participants are left, including Czerwinski, the other defendant who did not appeal his conviction. A reversal

by this Court as to Grezo or one of the other appealing defendants should therefore require a reversal as to the others who along with Czerwinski would number only four against whom the Government sought to indict and did convict.

CONCLUSION

It is respectfully submitted that the conviction of Richard Michael Beach be reversed, that the indictment be dismissed, that the sentence be vacated and that the case be remanded to the District Court for entry of a Judgment of Acquittal.

Respectfully submitted,

DAVID B. WEINSTEIN, ESQ.
Attorney for Defendant-Appellant,
Richard Michael Beach
Office & P.O. Address
410 Metcalf Plaza, P.O. Box A
Auburn, New York 13021
Tel.: (315) 253-4444

MICHAEL A. WINEBURG, ESQ. and CARL CANNUCCIARI, Esq., of Counsel

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

Term

No.

Title 18, U.S.C.,

Sections 371, 1955, 1952 and 2

EL L. FBARE,

I Standen Vio.

also known as "Sam"

JOSEPH T. D'AGOSTINO,

also known as "Joey" RICHARD MICHAEL BLACH,

also known as "Harpo"

CHARLES P. GREZO, also known as "Sonny",

LOUIS M. CAMERANO

RAYMOND CZERWINSKI

also known as "Baldy"

COUNT I

The Grand Jury Charges:

That continuously thoughout the period between September 1, 1973 and June 26, 1975, the exact dates being to the Grand Jury unknown, in the Northern District of New York and elsewhere, James V. Colloca and Leon Cook, named herein as co-conspirators but not indicted as defendants, and numerous other persons whose exact identities are to the Grand Jury unknown, and SAMUEL L. EBARE, JOSEPH T. D'AGOSTINO, RICHARD MICHAEL BEACH, CHARLES P. GREZO, LOUIS M. CAMERANO, and RAYMOND CZERWINSKI, the defendants herein, did unlawfully and knowingly conspire, combine and agree together and with each other, to conduct, finance, manage, supervise, direct and own an illegal gambling business, that is, a sports bookmaking operation and parlay business which violated the provisions of Article 225 of the Penal Law of the State of New York and was therefore in violation of Sections 1955 and 2 of Title 18 of the United States Code:

OVERT ACTS

And, during the period aforesaid, the said defendants committed, among others, the following overt acts in furtherance of the said conspiracy and in order to effectuate the object and purpose thereof:

- (1) On or about October 30, 1974, SAMUEL L. EBARE and James V. Colloca met in The Chart Room, Oswego, New York, and had a discussion concerning a debt;
- (2) On or about November 5, 1974, JOSEPH T. D'AGOSTINO spent approximately one and one-half hours at the residence of Leon Cook at 214 Gulf Road, Syracuse, New York, conducting the aforesaid illegal gambling business over Cook's telephone;
- (3) On or about December 21, 1974, JOSEPH T. D'AGOSTINO had a telephone conversation with CHARLES P. GREZO about matters relating to the operation of the aforesaid illegal gambling business, and in which D'AGOSTINO accepted layoff wagers from GREZO;
- (4) On or about January 3, 1975, JOSEPH T. D'AGOSTINO distributed line (or odds) information over the telephone to RAYMOND CZERWINSKI, and they discussed other matters relating to the operation of the aforesaid illegal gambling business;
- (5) On or about January 4, 1975, RICHARD MICHAEL BEACH and JOSEPH T. D'AGOSTINO had a telephone conversation in which they discussed the status of the aforesaid illegal gambling business concerning a particular game, and during which D'AGOSTINO gave BEACH the line (or odds) information on numerous sporting events;
- (6) On or about January 5, 1975, LOUIS M. CAMERANO telephoned JOSEPH T. D'AGOSTINO from Las Vegas, and CAMERANO gave D'AGOSTINO line (or odds) information on numerous sporting events

(7) On or about January 6, 1975, JOSEPH T. D'AGOSTINO and SAMUEL L. EBARE had a telephone conversation in which SAMUEL L. EBARE gave JOSEPH T. D'AGOSTINO instructions with respect to the payoff of a winning bettor in the aforesaid illegal gambling business, and they arranged a meeting.

All of which was in violation of Section 371 of Title 18 of the United States Code.

COUNT II

The Grand Jury Further Charges:

That, continuously from approximately September 1, 1973 through June 26, 1975, the exact dates to the Grand Jury being unknown, in the Northern District of New York and elsewhere, SAMUEL L. EBARE, JOSEPH T. D'AGOSTINO, RICHARD MICHAEL BEACH, CHARLES P. GREZO, LOUIS M. CAMERANO, and RAYMOND CZERWINSKI, the defendants herein, together with others who are both known and unknown to the Grand Jury, unlawfully did conduct, finance, manage, supervise, direct and own an illegal gambling business in the form of an unlawful sports bookmaking operation and parlay business which violated Article 225 of the Penal Law of the State of New York, and all of which was in violation of Sections 1955 and 2 of Title 18 of the United States Code.

COUNT III

The Grand Jury Further Charges:

That, on or about January 4, 1975, at ap roximately 12:28 p.m., in the Northern District of New York and elsewhere, JOSEP7 . D'AGOSTINO and LOUIS M. CAMERANO, the defendants herein, unlawfully did use and cause to be used a facility in interstate commerce, that is, telephone facilities between Mattydale, New York and Las Vegas, Nevada, to disseminate sports line and betting odds information with the intent to promote, manage, establish,

carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity — namely, a business enterprise involving gambling upon sporting events in violation of Article 225 of the Penal Law of the State of New York and Section 1955 of Title 18, United States Code; and thereafter the said defendants did perform and attempt to perform acts of promoting, managing, establishing, carrying on, and facilitating the promotion, management, establishment and carrying on of the aforesaid unlawful activity, all in violation of Sections 1952 and 2 of Title 18, United States Code.

And, further, in the Northern District of New York, the defendant herein, CHARLES P. GREZO, unlawfully did aid, abet, induce, procure and cause the said JOSEPH T. D'AGOSTINO to emmit the said offense at the aforesaid time and date, all of which was in violation of Sections 1952 and 2 of Title 18 of the United States Code.

COUNT IV

The Grand Jury Further Charges:

p.m., in the Northern District of New York and elsewhere, JOSEPH T. D'AGOSTINO and LOUIS M. CAMERANO, the defendants herein, unlawfully did use and cause to be used a facility in interstate commerce, that is, telephone facilities between Mattydale, New York and Las Vegas, Nevada, to disseminate sports line and betting odds information with the intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity -- namely, a business enterprice involving gambling upon sports events in violation of Article 225 of the Penal Law of the State of New York and Section 1955 of Title 18, United States Code; and thereafter the said defendants did perform

and attempt to perform acts of promoting, managing, establishing, carrying on, and facilitating the promotion, management, establishment and carrying on of the aforesaid unlawful activity; all in violation of Sections 1952 and 2 of Title 18, United States Code.

And, further, in the Northern District of New York, the defendant herein, CHARLES P. GREZO, unlawfully did aid, abet, induce, procure and cause the said JOSEPH T. D'AGOSTINO to commit the said offense at the aforesaid time and date, all of which was in violation of Sections 1952 and 2 of Title 18 of the United States Code.

COUNT V

The Grand Jury Further Charges:

That, on or about January 5, 1975, at approximately 12:30 p.m., in the Northern District of New York and elsewhere, JOSEPH T. D'AGOSTINO and LOUIS M. CAMERANO, the defendants herein, unlawfully did use and cause to be used a facility in interstate commerce, that is, telephone facilities, between Mattydale, New York and Las Vegas, Nevada, to disseminate sports line and betting odds information with the intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity -- namely, a business enterprise involving gambling upon sporting events in violation of Article 225 of the Penal Law of the State of New York and Section 1955 of Title 18, United States Code; and thereafter the said defendants did perform and attempt to perform acts of promoting, managing, establishing, carrying on, and facilitating the promotion, management, establishment and carrying on of the aforesaid unlawful activity; all in violation of Sections 1952 and 2 of Title 18, United States Code.

And, further, in the Northern District of New York, the defendant herein, CHARLES P. GREZO, unlawfully did aid, abet, induce,

procure and cause the said JOSEPH T. D'AGOSTINO to commit the said offense at the aforesaid time and date, all of which was in violation of Sections 1952 and 2 of Title 18 of the United States Code.

JAMES M. SULLIVAN, JR.
UNITED STATES ATTORNEY
NORTHERN DISTRICT OF NEW YORK

A TRUE BILL:

FOREMAN

information to the customers and taking in the wagering or daily betting action, as it is called.

also known as Mike, had a managing or directing role
in this business. The defendant, Charles Grezo and
the defendant, Raymond Czerwinski, were themselves
bookmakers or writers who were working with an for
the Ebare gambling business. And finally, the
defendant, Louis Camerano, was the Las Vegas connection
providing the business with the up-to-date, professional
point spread or line information right out of the
sports book in Las Vegas, Nevada, with respect to
the sporting events which will be the subject of the
wagering.

In addition, the evidence will show that on one particular day, January 4th, 1975, this business took in more than \$13,000 on that one day alone in gross betting revenues.

Now, I earlier mentioned that part of the evidence will be in the form of tape recordings of the defendants' voices. In December of '74 and January of '75, the United States District Court Judge Edmund Port, signed court orders authorizing the FBI to conduct a lawful wiretap of two telephones concerning

	Colloca, by the Government, cross
	Colloca, by the invertible, trans
1	THE WITNESS: No, I didn't select it.
2	They asked me if this was Mr. Beach, they asked me.
3	They told me who it was and I identified him.
4	MR. WEINSTEIN: May I proceed, your Honor?
5	THE COURT: Yes.
6	BY MR. WEINSTEIN:
7	Q Now, Mr. Colloca, you stated that you handled this
8	gambling operation with the Syracuse phone number over a
9	period of approximately four to five months, isn't that
10	correct?
11	A Well, it was that one year.
12	Q Okay. But it wasn't something that continued for a coupl
13	weeks, it was over a period of four or five months,
14	isn't that true?
15	A Over a period of baseball season and a couple weeks of
16	football season.
17	Q Fine. Now, during that period of time, it was your
18	testimony that a number of different people on occasion
19	came to your establishment to collect from you, isn't
20	that correct?
21	A Yes.
22	Q Now, also on your direct testimony, you stated that you

Now, also on your direct testimony, you stated that you only were approached by the defendant, Beach, on four or five occasions, isn't that true?

A I would say in that area.

24

25

		0011	loca, by the Government, cross
1			is that correct?
2		A	I stated I am not a bookmaker.
3		Q	Have you ever been convicted of a crime, Mr. Colloca,
			a felony?
		A	I just I was just convicted a couple weeks ago, the
	6		crime, a lelony.
	7	Q	And you were convicted of illegal gambling?
	8	Α -	Of illegal gambling, right.
	9	Q	Right. And so you have been convicted of a felony
	0		relating to gambling?
	1	A	Yes, I was convicted of how was it worded?
	2	Q	If you can remember.
	3	A	It was possession of gambling slips.
1	14	Q	Okay. Now, have you recently suffered a second heart
	15		attack?
	16	A	Yes, I have.
	17	Q	And has this
	18	A	This is my fourth.
	19	Q	And has this affected your memory here today?
	20	,	MR. PISHER: Objection, irrelevant,
	21		his health, your Honor. He is discussing heart attacks.
	22		THE COURT: Overruled.
	23	BY	MR. WEINSTEIN:
	24	Q	Has this affected your memory here today, Mr. Colloca,
	25		these heart attacks?
		1	

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i i		
1	A	Okay.
2	Q	Mr. Keller, was there a surcharge or an extra amount of
3		money paid on losing bets by you to Mr. Czerwinski?
4	A	You mean was there interest charged or was there
5	Q	I will give you an example. If you made a \$100 bet with
6		Mr. Czerwinski first of all, would you put the money
7		up front or would he take your credit?
8	A	If I put the money up front, it would cost me \$110 to
9		win \$100.
10	વ	In other words, what if you lost that \$100 bet, how much
11		would you have to pay?
12	A	\$110.
13	Q	And if you won that \$100 bet, how much would you collect?
14	A	3100.
15	a	How, did you ever place any beta with the Defendant Ebare?
16	A	No.
17	Q	By the way, were you acquainted with the defendant,
18		Michael Beach, Richard Michael Beach?
19	A	Yes.
20	· Q	Do you see him in the courtroom?
21	A	Yes.
22	9	Would you point him out to us, please?
23	A	Third from the left.
24	-	THE COURT: Let the record reflect he has
25		identified Mr. Beach.

- In the office.
- 2 Q Was he standing right next to Mbare or was he standing
- over by a window? Where was he standing, if you recall?
- 4 A Mostly just walking around, looking out, you know, just
- 5 there.
- 6 Q Then he wasn't a party to the conversation?
- 7 A I don't believe so, no.
- 8 Q Okay. Now, did Beach say anything to you when he came in?
- 9 A He might have said hello, that was the extent of it.
- 10 Q In fact, during this entire conversation, isn't it true
- 11 that Michael Beach and you did not say anything to each
- 12 other?
- 13 A That's true.
- 14 Q Okay. Now, at this time or any time, did you and Mike
- Beach ever talk about the money that was owed?
- 16 A No, I don't believe so, no.
- 17 Q No conversation about that money?
- 18 A Ho.
- 19 Q Now, did you ever place any bets with Mike Beach?
- 20 A tio.
- 21 Q He never provided you with any line information, did he?
- 22 A Ho.
- 23 Q In fact, you and he never talked about gambling at all,
- 24 did you?
- 25 A No, I no.

1 You did not talk about gambling? 0 2 4 lla. He never talked about collecting any money from you, did 3 he? 5 NO. Die Michael Beach ever threaten you in any fashion what-6 7 soever, ever? 8 A tio. Okay. Now, you have seen Beach and Lbare together on 9 10 occasion, have you not? Yes, I have. 11 And I believe your testimony before the grand jury is 12 2 that they were friends, or sidekicks, isn't that correct? 13 14 Yes. à And did you ever see them conduct any type of business 15 together. Beach and Bbare? 16 no, I haven't. 17 A And you know them to be nothing more than just social 18 0 19 friends? That is - I have never seen them conduct any busir ss. 20 MR. WHINSTEIN: Thank you. No further 21 questions. CROSS-EXAMINATION (Cont'd) 23 24 SY MR. PALMIURD: Mr. Heller, yesterday you testified that during the sports 25

1		season in the latter part of 1974, early part of 1975,
2		you bet as much as 100 or \$200 per game, is that correct?
3	A	I'm not sure of the exact figures, give or take.
		I in not bare of the exact findles, give of take.
4	9	So that it could be more than \$200 or less than \$200, is
5		that correct?
6	A	Correct.
7	Q	And before the grand jury when you testified, you
8		indicated to them that
9		- MR. PISHER: Objection. He is reading
10		grand jury testimony.
11		THE COURT: Sustained.
12	BY F	R. PALMIERE:
13		Dispating ways attacking to the second
	4	Directing your attention to page 5
14		THE COURT: Put the same question to him.
15		Let's see what his answer to it is now.
16		HR. PALMIERE: All right, I will ask
17		it this way:
18	Q	Mr. Keller, during that period of time, late 1974,
19	H	
		early 1975, did you bet as much as three to four hundred
20		early 1975, did you bet as much as three to four hundred dollars per game?
20 21	A	
	A	dollars per game?
21	A	dollars per game? It is possible that I did. I don't remember the exact
21 22		dollars per game? ' It is possible that I did. I don't remember the exact amounts.

- 1 And when you met with him in the bowling alley, he was 0 2 alone, was he not? I don't know. He was at the bar. 3 Okay. How, in the course of your making your wagers, 4 you would telephone a number, isn't that true? 5 6 Yes. And who was the person on the other end of the phone when 7 8 you made the call, when you called your bet in? 9 A Joe. And did there come a t. me when you also received line 10 Q 11 information concerning --12 Yes. 13 And who gave you that information? Q 14 Joe. Joe. How, you testified at the grand jury that you do not 15 know Michael Beach, isn't that correct? 16
- 17 A No, I don't.
- 18 Q It is not correct?
- 19 A No, that's correct, I do not know him.
- 20 | Q You don't know Michael Beach?
- 21 A Who is Michael Beach?
- 22 Q This gentleman here in the red shirt.
- 23 A No.
- 24 Q You never saw him in the company of Sam Ebare?
- 25 A Not that I can recall.

1	Q ·	You never paid him a dime, did you, Mr. Visconti?
2	A	No.
3	Q	He naver asked you for a dime, did he?
4	A	No, I don't know, I never saw him before.
5	Q	You never saw him before.
6		MR. WalsaTeln: Thank you.
-		MR. PALMIERS: No questions.
8		MR. RYDELEK: No questloss
9		MR. PAPPAS: No questions.
10		REDIRECT EXAMINATION
11	BY	MR. FISHER:
12	Q	Mr. Visconti, during 1972, 1973 and 1974 and up to your
13		grand jury testimony, did you bet regularly?
14	A	Ye
15	Q	During football season?
16	A	Yes.
17	Q	With San Rbare?
18		HR. SHAMAHAM: I object to it in that
19		form, if the Court please.
20	YE!	MR. PISHER:
21	ą	Did you bet during those years with San Ebare?
22		MR. SHANAHAN: I object to it as not
23		proper redirect and not proper in form.
24		AR. PISHER: Your Honor, I have another
25		statement

1	A	Yes.
2	Q	And who, if anyon, was in the car when you executed the
3		warrant?
4	A	The car was vacant when I did execute the warrant.
5	3	bid you see anyone in the ear just prior to executing the
6		warrant?
7	A	Yes, I did.
8	Q	Who did you see?
9	A	I believe the individuals were one Samuel Ebare and
10		Michael Beach.
11	Q	Do you see these individuals in the courtroom today?
12	Λ	Yea, I do.
13	Q	Could you identify them; first Mr. Ebare.
14	Λ	Mr. Ebare is sitting to my right in the blue suit, up
15	e?	against the wall.
16		MR. PISHER: Let the record reflect
17		the Defendant Ebare has been identified.
18	A	(Continuing) Mr. Beach is sitting directly, or a little
19		bit off to my right with a red shirt on.
20		MR. PISHER: Let the record reflect
21		the Defendant Beach has been identified.
22	q	How, your search was upon the car, is that right?
23	A	Yes.
24	Q	What kind of automobile was this?
25		W. SHA AHAN: What was the question, plea

1		blank, isn't that
2	A	No, I didn't. Mr. Shanahan did. The only thing that
3		appears on them are my initials and the date they were
4		received.
5	ę	Nothing else that you can see?
6	A	Hothing that I can see.
7	Q	Is this vehicle registered to Richard Michael Beach? Yes
8		or no.
9	Λ	I don't know.
10	Q	You don't know?
11	A	I don't know.
12	Q	Okay. Now, did you participate in the preparation of
13		Exhibit 3510?
14	A	What is Exhibit 3510?
15	Q	That is the report covering the search.
16		MR. WEINSTEIM: May I approach the
17		witness, your Honor, and show it to him.
18		THE CLURY: Yes, sure.
19	A	Yes, I did.
20	i q	Now, with reference to this report, A, B and C, the blank
21		line sheets set forth at A, 17, where were they located
22		in the vehicle?
23	A	May I refer to my copy here?
24	9	Certainly.
25	A	Item A would be 17 blank line sheets which were located

on the back rear of the car, on the driver's cado. 1 That was on the driver's side? Back rear of the car. Item No. B would be one blank 3 line sheet located on the driver's side on the floorboard in the front. 5 And C? 6 C would be one blank line sheet located underneath the 8 back seat. At which side of the vehicle, do you remember? 9 I don't remember. 10 But with reference to A and B, those exhibits were 11 0 located on the driver's side of the vehicle? 12 Yes. 13 A Which side of the vehicle was Hr. Beach sitting on? 14 Mr. Beach was sitting on the passenger side of the vehicle, 15 if I recall correctly. 16 MR. WEINSTEIN: Thank you. 17 MR. PAPPAS: No questions. 18 MR. RYDELEK: I have one or two. 19 CROSS-EXAMINATION (Cont'c) 20 BY MA. RYDELEK: 21 Hr. O'Brien, these schedules that you are referring to 22 are commonly sold in the newsstands around town? 23 7 don't know. 24 Well, they are not illegal in and of themselves? 25

a report of --1 IIR. SHAMARAN: Pardon me. What was 2 that number? 3 IR. FISHER: 3509. 4 "Is that your report of the events of that day? 0 Yes, it is. A 6 Now, could you tell us what happened that day? MR. Well STEIM: Your Honor, at this time 8 it would facilitate to save time, I would like to offer 9 a continuing line of objection to all questions with 10 reference to the search of Richard Michael Beach based 11 on the ground that there was no probable cause for the 12 search and that it was illegal and in violation of his 13 rights. 14 THE COURT: Overruled. 15 BY MR. PISHER: 16 Could you tell us what happened that day, please? 17 Yes. On January 20th, Michael Beach had exited the 18 vehicle. I approached him, identified myself, told him 19 that I had a search warrant for his person, advised him 20 of his rights orally and searched his person. 21 Mow, what vehicle was he exiting? 2 22 He was exiting a Cadillac. * 23

And where was this Cacillac located?

It was on dignland Street.

6

24

to a weekly sports journal, do you recall where that was 1 taken from him during the search? To the best of my recollection, thatwas being held under 3 his coat. Okay. Now, what is the date on this? 5 The date that I seized it is January 20th, '75. Okay. And it was for games from the week previously? 7 It says January 13 through Sunday, the 19th. 8 And I don't know what these are called. Can you tell me 9 Q what this is? 10 Well, I identified it on my report as pieces of paper 11 with warious team names on. I am not an expert. 12 Heither am I, sir. That is what we will call it. Do you 0 remember where these were on his person? Were they under 14 15 his arms? To the best of my recollection, they were wrapped up 16 inside of this journal. 17 Okay. So, to the best of your recollection, the 13 sports journal and the sheets with the names on it were 19 like this, held under his coat, isn't that correct, to 20 the best of your recollection? 21 To the best of my recollection, yes. 22 And these items, with his license or registration, was 23 that in his wallet? 24 I believe that was in the red address book. 25

	Loon	ey, by the Government, cross
1	Q .	And these other little papers with men's and wemen's
2		names and addresses on them and phone numbers, these were
3		all in his wallet, isn't thatcorrect?
4	Å	I don't think he had a wallet, because if he did, we
5		would have seized it.
6	Q	They were in his possession?
7	A	They were in his address book or in his pocket.
8	Q	Did you have a chance to look at the address book after
9		you seized it?
10	A	Yes, I did.
11	9	Okay. And was there anything inside the address book
12		other than the pages that I am showing you now?
13	A	I can't recall.
14	5	And these just have the names of men and women and the
15		phone numbers, don't they?
16	A	Well, it has names and telephone numbers. I don't know
17		whether they are men or women.
18		As you saw, it has names of restaurants.
19	٩	Right. Now, as we look through this, do you see the -
20		It is just names and phone numbers, there are no amounts
21		written next to the names, is there?
2	A	well, we haven't gone through all the papers, so I can't
2	3	tell.
2	4 9	Okay.
2	5 A	Also there is

1 Hames of teams? It is names of teams with numbers, obviously. 2 On one page? 3 One page. Wait a second. Go a little slower. 4 Okay. Wouldn't this best be described as a single, 5 bachelor's address book? 6 MR. FISHER. Objection. Calling for 7 8 a conclusion. THE COURT: Sustained. 9 BY MR. WEINSTEIN: 10 Now, I also have here, Mr. Looney, two sheets. Would you 11 identify them for us? 12 Yes. They are two pieces of white, lined paper with 13 14 teams and names. Is this printed or is it handwritten? 15 Q It is handwritten. 16 Okay. Did you ever have this examined in comparison for 17 a handwriting example of the defendant to find out who 18 wrote this? 19 I, personally, did not. 20 To you do not know who wrote this up? 21 Q No. I don't know who wrote it up. 22

dow, the way this is folded, would I be correct in

Okay. It could have been anyone?

It could have.

23

24

25

A

Q

assuming that this also was part of the packet which 1 contained these sports journal and sheets, the way it 2 is folded, it seems to go together? 3 To the best of my recollection, yes. A 4 All right. And these were not in his pockets, they were 5 like this, isn't that correct? 6 They were being held under his coat, in his possession. 7 How, did you see him immediately prior to his exiting 8 the venicle? 9 I observed Mr. Beach in the vehicle from another vehicle. 10 All right. Now, did you see him pick these up off the 11 seat, or is the first time you say them when they were 12 under his coat? 13 The first time I saw them was when I removed them from A 14 under his coat. 15 Now, you are familiar that Mr. Beach, as some of the Q 16 other defendants, were under surveillance concerning 17 gambling operations, isn't that correct? 18 That's correct. A 19 Now, how much money did Mr. Beach have on his person wher 0 20 you arrested him? 21 I didn't arrest him. 22 A Hot arrested, when you searched him. 23 0 I searched him, and he had, according to my report here, 24 A four one dollar bills in United States currency. 25

- Yes, sir. 1
- Now, I can assume from that statement that you never 0 2 placed a wager with the defendant, Richael Beach?
- No.

£

3

- During this period of time? Q 5
- ilo. 6
- Now, you never paid Michael Beach any monies during this G 7
- priod of time that you testified to? 8
- 110-2 9
- There came a time when there was a collection problem, 0 10
- I think you stated, and when there was, you talked to 11
- Joey about 1t? 12
- A Yes. 13
- All right. And you had no conversations with Mr. Beach Q 14
- concerning this collection problem? 15
- No, not that I remember, no. 5. 16
- And Beach never collected any money for you or strike 0 17
- that. Hever collected any money from you, isn't that 18
- right? 19
- Hever collected any from me, no. E. 20
- Then it would probably be a correct statement that to the Q 21
- best of your recollection, Beach and D'Agostino had 25
- nothing to do with each other? 23
- As far as I know. 24
- MR. MEINSTEIN: Thank you. 25

composite transcript. 1 Now, have you formulated an opinion as to the role of 0 2 the Defendant beach in this operation? 3 Yes. I have. A And what is, that opinion? Q 5 The individual identified in the transcript as Beach A occupies the position of trust in this gambling 7 organization inasauch as he receives a bottom figure for an account and he also --THE COURT: Keep your voice up, please. 10 We have to compete with pneumatic hammers and everything 11 else here, and I am sure a big man like you must have 12 more voice than that quiet little mumble. 13 THE WITNESS: Yes, sir. 14 (Continuing) -- inasmuch as he receives a bottom figure A 15 for an account, and he also receives the amounts that are 16 wagered on both teams in a single contest. This type of 17 information is not normally given ou unless it is to a trusted individual of the organization. 19 How, have you formulated an opinion as to the role, if 0 20 any, of the person designated as Grezo in this transcript? 21 Yes, I have. 22 À And what is that opinion? Q 23 The individual identified in the transcript as Charles 24

Grezo occupies a role of receiving line information,

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1,

information to the customers and taking in the wagering or daily betting action, as it is called.

The defendant, Richard Michael Beach, also known as Mike, had a managing or directing role in this business. The defendant, Charles Grezo and the defendant, Raymond Czerwinski, were themselves bookmakers or writers who were working with an for the Ebzre gambling business. And finally, the defendant, Louis Camerano, was the Las Vegas connection providing the business with the up-to-date, professional point spread or line information right out of the sports book in Las Vegas, Nevada, with respect to the sporting events which will be the subject of the wagering.

In addition, the evidence will show that on one particular day, January 4th, 1975, this business took in more than \$13,000 on that one day alone in gross betting revenues.

Now, I earlier mentioned that part of the evidence will be in the form of tape recordings of the defendants' voices. In December of '74 and January of '75, the United States District Court Judge Edmund Port, signed court orders authorizing the FBI to conduct a lawful wiretap of two telephones concerning

from the others in the conspiracy, especially Beach and Ebare, the two higher bosses in the operation.

Now, Mr. Shanahan said in his opening statement that the Defendant Ebare wasn't involved in this gambling operation.

Mr. Weinstein said in his opening statement that the Defendant Beach was just a drinking buddy of Ebers, and that is about it.

Well, that is clearly not true from the evidence. You will recall the testimony of Leon Cook. Leon Cook testified that he supervised a group of bettors in the Syracuse area, that he got the line information from D'Agostino, and passed it along to his bettors, and the bettors called D'Agostino to place their bets.

And perhaps most importantly, when it came time to settle up at the end of the week, it was Cook that was responsible. Leon Cook wasn't just a hanger on or a casual party to this; he was responsible for paying up Joseph D'Agostino when his bettors lost. And accordingly, he was the one who settled up with the bettors. And that is our first excepts of insulation.

Leon Cook insulated his own betters, the people he surprised from D'Agostino. A-3/

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to read to you. They are in evidence, and you can read them for yourself.

They show a eneral pattern of activity of meetings, and it is obvious that Same Ebare does not talk much on the telephone. He arranges meetings on the phone, and then goes around and settles up, and discusses with his higher echelon people and the status of the accounts, and at these physical meetings

Now, what about the Defendant Beach?

The Defendant Beach not only called in on this telephone that we have just been going over, Kathy

Gell's phone, but he also calls in on Joey D'Agostino's phone. Beach was less insulated because he is down the line in the hierarchy, and Beach had to call into Joey D'Agostino to find out the various times and the status of the business, and get information which would further his collection activities.

Now, I ask you to turn to Page 107, if you wish, and I just want you to follow that, and you can summarize along if you want.

These are all Beach's calls, and listed sequentially through the period of the wiretap, and you heard all of them, and you can see the pattern of activity over the period of time, and that is why it is called a composite tape. It takes out the calls

says, "Anything else? Any messages or anything?"

And you know who he is carrying messages

to, and Joey says, "Nope, everything is good."

Then on Page 113, again, he gives him a bottom line of 5790 on Minnesota, and 3140 on Pittsburgh.

And then at the end, he says, "How do we stand there, ya know?"

Joey says how do we stand, and that is Beach's end of the business, and he says, Beach says, "Just about juice, all juice," and when he says just about all juice, he means that your account on balance on that game, and we have got all profit. It is all gravy.

And the next page is 119, and in the beginning he gives him the bottom figure of 2860 for Texas, and 1590 for Auburn.

that given that set of evidence, which is all here, and you can just listen to it again if you like, and any portion of the transcript can be read back to you if you like, and it is perfectly obvious that Ebare is the top man, and that he uses Beach as a go-between, and that D'Agostino is the man up front to deal with all other levels of bookmaking business.

1	MR. FISHER: Objection, irrelevant.
2	THE COURT: Sustained.
3	BY MR. WEINSTEIN:
4	Q lir. Colloca, have you ever had a problem with your
5	memory?
6	A Yes, I do.
7	Q And do you recall testifying before the grand jury and
8	stating at that time that you had a problem with your
9	memory?
10	A Yes, I do.
11	Q You do have a problem with your memory?
12	A Yes, I do.
13	Q Now, when you appeared before the grand jury, you were
14	shown a picture of Richard Michael Beach, were you not?
15	A Yes.
16	MR. WEIRSTEIN: May I approach the
17	witness, your Honor?
18	THE COURT: Yes.
19	THE CLERK: Defendant's Exhibit A
20	marked for identification.
21	BY MR. WEINSTEIN:
22	Q And Mr. Colloca, is this the picture that you were shown
23	when you testified at the grand jury?
24	A Yes. Well, I assume this is the picture.
25	Q Okay. Now

1		1s that correct?
2	A	I stated I am not a bookmaker.
3	จ	Have you ever been convicted of a crime, Mr. Colloca,
4		a felony?
5	А	I just I was just convicted a couple weeks ago, the
6		crime, a felony.
7	ð	And you were convicted of illegal gambling?
8	A	Of illegal gambling, right.
9	Q	Right. And so you have been convicted of a felony
10		relating to gambling?
11	A	Yes, I was convicted of - how was it worded?
12	Q	If you can remember.
13	A	It was possession of gambling slips.
14	Q	Okay. Now, have you recently suffered a second heart
15		attack?
16	А	Yes, I have.
17	Q	And has this
18	A	This is my fourth.
19	Q	And has this affected your memory here today?
20	1:	MR. PISHER: Objection, irrelevant,
21		his health, your Honor. He is discussing heart attacks.
22		THE COURT: Overruled.
23	ВУ	MR. WEINSTEIN:
24	Q	Has this affected your memory here today, Mr. Colloca,
25	1	these heart attacks?

Well, I'm not very well, that, I will tell you. 1 You are not very well? 2 I say, no, I'm not very well, no. 3 But has it directly affected your memory, sir? 4 Well, my medication has got a lot to do with it. 5 A MR. WEINSTEIN: No further questions. 6 MR. PALMIERE: Just one question, 7 8 your Honor. CROSS-EXAMINATION (Cont'd) 9 10 BY MR. PALMIERE: Mr. Colloca, I will be very brief. I would just like to 11 know whether or not you have known Mr. Peter Blake up in 12 13 Oswego? 14 Yes, I know him. 15 You knew him towards the --THE COURT: That's one. I thought you 16 17 said one. MR. PALMIERE: One more, your Honor. 18 In the latter part of 1974 and early part of 1975, 19 Q Mr. Peter Blake accepted bets on the telephone, did he 20 21 not, from people who called him? This -- I know Mr. Peter Blake, I know Mr. Peter Blake 22 23 more as a boilermaker. As a what? 25 As a boilermaker.

- 1	
1	A Okay.
2	Q Mr. Keller, was there a surcharge or an extra amount of
3	money paid on losing bets by you to Mr. Czerwinski?
4	A You mean was there interest charged or was there
5	Q I will give you an example. If you made a \$100 bet with
6	Mr. Czerwinski first of all, would you put the money
7	up front or would he take your credit?
8	A If I put the money up front, it would cost me \$110 to
9	win \$100.
10	Q In other words, what if you lost that \$100 bet, how much
11	would you have to pay?
12	A \$110.
13	And if you won that \$100 bet, how much would you collect:
14	A \$100.
15	Q How, did you ever place any beta with the Defendant Ebare
16	A No.
17	Q By the way, were you acquainted with the defendant,
18	Michael Beach, Richard Michael Beach?
19	A Yes.
20	Q Do you see him in the courtroom?
21	A Yes.
22	Q Would you point him out to us, please?
23	A Third from the left.
24	THE COURT: Let the record reflect he has
25	identified Mr. Beach. A-37

Keller, by	the	Government,	cross
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- In the office.
 - 2 Q Was he standing right next to Ebare or was he standing
 - over by a window? Where was he standing, if you recall?
 - 4 A Mostly just walking around, looking out, you know, just
 - 5 there.
 - 6 Q Then he wasn't a party to the conversation?
 - 7 A I don't believe so, no.
 - 8 Q Gkay. How, did Beach say anything to you when he came in?
 - 9 A He might have said hello, that was the extent of it.
 - 10 Q In fact, during this entire conversation, isn't it true
 - Il that Michael Beach and you did not may anything to each
 - 12 other?
 - 13 A That's true.
 - 14 Q Okay. Now, at this time or any time, did you and Mike
 - 15 Beach ever talk about the money that was oxed?
 - 16 A No, I don't believe so, no.
 - 17 Q No conversation about that soney?
 - 18 A No.
 - 19 Q Now, did you ever place any bets with Mike Beach?
 - 20 in the.
 - 21 Q He never provided you with any line information, did he?
 - 22 A HO.
 - 23 | Q In fact, you and he never talked about gambling at all,
 - 24 did you?
 - 25 A No, I -- no.

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- Beach ever talk about the money that was owed?
- 16 A No, I don't believe so, no.
- 17 Q No conversation about that money?
- 18 A Ho.
- 19 Q Now, did you ever place any bets with Mike Beach?
- 20 A 110.
- 21 Q He never provided you with any line information, did he?
- 22 A HO.
- 23 Q In fact, you and he never talked about gambling at all,
- 24 did you?
- 25 A No, I -- no.

You did not talk about gambling? 1 0 Ho. 2 He never talked about collecting any money from you, did 15 3 he? 5 À 10. Die Michael Beach ever threaten you in any fashion what-6 7 soever, ever? 8 A 110 . Okay. Now, you have seen Seach and Lbare together on 9 occasion, have you not? 10 Yes, I have. 11 And I believe your testimony before the grand jury is 12 9 that they were friends, or sidekicks, isn't that correct? 13 Yes. 14 i And did you ever see them conduct any type of business 15 together, Beach and abare? 16 ho. I haven't. 17 And you know them to be nothing more than just social 18 0 friends? 19 That is - I have never seen them conduct any business. 20 ·A MR. WHINSMEIN: Thank you. No further 21 22 questions. CROSS-EXAMINATION (Cont'd) 23 SY MR. PALKIERU: 24

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fir. heller, yesterday you testified that during the sports

composite transcript. 1 Now, have you formulated an opinion as to the role of Q 2 the Defendant Beach in this operation? 3 Yes. I have. And what is that opinion? 0 5 The individual identified in the transcript as Beach 6 occupies the position of trust in this gambling 7 organization inasmuch as he receives a bottom figure for 8 an account and he also --9 THE COURT: Keep your voice up, please. 10 We have to compete with pneumatic hammers and everything 11 else here, and I am sure a big man like you must have 12 more voice than that quiet little mumble. 13 THE WITHESS: Yes, 31r. 14 (Continuing) -- inasmuch as he receives a bottom figure A 15 for an account, and he also receives the amounts that are 16 wagered on both teams in a single contest. This type of 17 information is not normally given out unless it is to 18 a trusted individual of the organization. 19 Now, have you formulated an opinion as to the role, if 20 3 any, of the person designated as Grezo in this transcript? 21 Yes, I have. 22 À And what is that opinion? C 23 The individual identified in the transcript as Charles 24 A Grezo occupies a role of receiving line information,

	1	Q Now, could you turn to page 94 of the transcript and show
	2	us another example, please, a different kind?
	3	Now, what kind of letting is going on in
	4	that conversation?
	5	A This is betting activity occurring between the individual
		identified in the transcript as D'Agostino accepting
	7	wagers from an individual by the name of Grezo. One
	8	example is Louisville, 15-1/2, 16, buck each. This is
	9	a split line.
y-	10	What that means is that Grezo is placing
	11	a wager on Louisville at 15-1/2 and also on Louisville
	12	at 16, at a buck each, or \$100 each, making that a
	13	200-dollar wager.
	14	Throughout this call there are several
	15	examples like that, and there is a total of \$5300 on this
	16	one call.
	17	Q That is how you reflect it on your unmary, \$5300 in that
	18	call?
	19	A Yes, I did, at 7:01 p.m., Grezo is the name or designation,
	20	35300.
	21	Q Now, for a third and final example of a different kind of
	22	bet, would you turn to page 99 in the transcript, please?
	23	What kind of activity is going on there?
	24	A This is a call between an individual by the name of
	25	D'Agostino and the caller, Czerwinski. Czerwinski is

Yes, there were. A

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- You can just paraphrase it. You don't have to read them.
 - Well, there are three calls in the portion of the transcript where D'Agostino and Czervinski, also known as Baldy, are carrying on a conversation regarding a better by the name of Jinmy Keller, I believe is the correct name, who is behind in his payments. He has run

up a gambling debt and cannot afford to pay 10 off.

Jimmy requests to see Sam so that he can try and make an arrangement to pay it off on installment. The discussion on these three calls are trying to decide whether or not they should let Jimmy see Sam to make this arrangement.

- How, have you formed an opinion as to the role of the person designated at D'Agostino in this business?
- Yes, I have. A
- And what is that opinion, please? 17
- The individual identified in the transcript as D'Agostino A is at least a controller with responsibility of dispensing line information, bottom figures. He accepts wagers from writers and bettors. He regulates collections and payoffs to customers. 22
 - I notice you are reading part of that. That is from 0 your laboratory report?
- No, that is notes that I prepared in review of this 25 ٨

composite transcript. 1 How, have you formulated an opinion as to the role of 2 the Defendant Beach in this operation? 3 Yes, I have. 4 And what is that opinion? 5 The individual identified in the transcript as Beach 6 occupies the position of trust in this gambling 7 organization inasmuch as he receives a bottom figure for 8 an account and he also --9 THE COURT: Keep your voice up, please. 10 We have to compete with pneumatic hammers and everything 11 else here, and I am sure a big man like you must have 12 more voice than that quiet little mumble. 13 THE WITHESS: Yes, 31r. 14 (Continuing) -- imasmuch as he receives a bottom figure 15 for an account, and he also receives the amounts that are 16 wagered on both teams in a single contest. This type of 17 information is not normally given out unless it is to 18 a trusted individual of the organization. 19 Now, have you formulated an opinion as to the role, if 0 20 any, of the person designated as Grezo in this transcript? Yes, I have. 22 And what is that opinion? 23 The individual identified in the transcript as Charles 24 Grezo occupies a role of receiving line information,

placing lay-off wagers, makes line changes and also gives 1 advice to D'Agostino on some line changes. 2 What do you mean by lay-off wagers? 3 Lay-off wagers are rebetting of wagers from one bookmaker to another bookmaker. 5 So, are you saying that Grezo is a bookmaker? 6 He could - he is conceivably a bookmaker. He occupies a position as more than just a bettor. 8 Aside from the bookmaker, what else could hebe? 9 He could also be a writer. 10 And what is a writer? 11/ A writer is an individual who accepts wagers from bettors 12 relays them to the gambling organization in the furtherance of their business. 14 I see. 15 0 And in either of these events, whether he is a bookmaker 16 or a writer, is he something -- would you say he is a 17 bettor, a mere bettor? 18 No, he is something more than a mere bettor. 19 Now, have you formed an opinion as to the role of the 20 Q Defendant Czerwinski in these transcripts? 21 Yes, I have. 22 A And what is that, please? 23 Q The individual identified in the transcript as Raymond 24 Czerwinski or Baldy is at least a writer who receives

line information from D'Agostino, reluys wagers to D'Agostino, seeks assistance from D'Agostino regarding disputes between a bettor and himself, and he also makes collections.

THE COURT: When you say writer, what do you mean?

THE WITNESS: He is an individual that accepts wagers from bettors and relays them to the organization.

THE COURT: Who makes the decision whether to accept or reject the wager?

accepts the wagers and relays them to the organization. He is a writer, gets instructions from the organization as to wagering limits that he sets on the bettors as to how much they can wager per wager or per bet, and also gives them instructions as to who gets credit or who doesn't get credit. It is a policy-making decision.

BY MR. FISHER:

- Q Then, is a writer like an employee or --
- 21 A Yes, a writer is an employee, something more than a mere 22 bettor.
 - Now, have you formed an opinion as to the role of the person designated as Camerano in this transcript?
 - A Yes. I have.

of the person identified as Ebare on the transcripts? 1 Yes. I have. 2 And what is that? 2 3 The individual identified in the transcripts as Sam Ebare 4 is an owner, or a manager of this gambling business, 5 inaconach as he but the authority to make policy decisions 6 regarding the operation of the business. 7 He also settles alsputes between bettors 8 and writers, and me also finances the organization. 9 And could you tell us how you arrived at that conclusion? 0 10 On page 24 at the rear of the transcript --11 At the very end section there? 12 The very end section. 13 The very end. 14 This is a conversation between D'Agostino and Ebare in 15 the center of the page, or a little bit above the center 16 of the page. You will see that D'Agostino says, "I'm in 17 north Syracuse," and he has -- well, excuse me. At the 18 top of the page it says, I not to see somebody at Ben's 19 about 1:15." 20 MR. SHAMAMAM: Pardon me a minute. Me 21 can't hear. 22 BY MA. FIS. ER: 23 Could you speak up, please. 24 At the top of the page, D'Age sino says, 'I have got to

very important for the people the community.

Please don't make the mistake and please don't be

deceived. Don't be confused. Don't go back and, in
a cloud of confusion, be diverted from the truth and
just say, "Well, I am confused and we will find them
not gullty."

Follow the Judge's instructions and listen carefully. Use your knowledge of the evidence and use your plain common sense to put it together.

It is submitted that when you do, you will return a verdict of guilty.

Thank you very much.

Jury: It now becomes my function at this stage of the trial to instruct you on the law that governs your decision in this case. Throughout their closing arguments, all of the lawyers, here and there, instructed you on the law. When they did that, they were out of their province. I am the exclusive judge of the law. I permitted them to tell you something about the law because in this kind of a case it is almost impossible to discuss the evidence without relating it to the legal issues involved.

But you must bear in mind that if what they said about the law differs from what I say about

it, you must reject what they said and apply the law as I give it to you.

Now, just as I am the exclusive judges of the law, you and you alone are the exclusive judges of the facts. You and you alone decide what witnesses you will believe, and you and you alone decide how much of a witness's testimony you will believe and how much of it you may wish to reject. You and you alone decide what weight, what value, what conclusions, what inferences you draw from the evidence and, of course, ultimately you decide the guilt or innocence of each defendant on each count in this indictment.

Now, you are not to conclude from any rulings that I have made throughout this trial, or any questions that I may have asked, that I have any opinion one way or the other as to whether any defendant is guilty or not guilty of any of the charges made against him in this indictment. That decision, as I have told you earlier, is exclusively up to you.

Now, how do you go about finding the facts? Finding the facts is merely a process by which you, the jury, consider the exhibits which have been received in evidence. Consider the testimony of all of the witnesses, both on direct and on cross-examination. Sift out what you believe, weigh it in the scale

of your reasoning powers and common sense, and draw such conclusions as your good, everyday common sense tells you that the evidence supports and justifies and decide just where the truth lies in this case.

Now, in this connection all evidence is

Now, in this connection all evidence is of two general types; direct evidence and circumstantial evidence. Evidence is direct when the facts are shown by exhibits which are admitted into evidence, or when sworn to by witnesses who have actual knowledge of them from something that they have learned through the exercise of one of their five fundamental senses, such as sight, hearing, taste, smell and touch.

Circumstantial evidence simply means the drawing of a logical conclusion from other facts that are shown by direct evidence.

The classical example of circumstantial evidence is in Daniel DeFoe's story about Robinson Crucoe. When Crusoe saw the footprint on the sand and knew that it was not his own, the only logical conclusion to draw was that another human being was on the island.

Now, not all circumstantial evidence calls for such a compelling and absolutely certain conclusion. But I am sure that you are all familiar with the process. We use it in our daily lives. We

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draw conclusions based on our common sense and experiance from other connected facts and the process is
no different here.

Now, it is your memory of the evidence that controls here. It is not the way I remember it end it is not the way counsel remembers it and I have no intention here of reviewing this evidence. I know that it is fresh in your mind. If your memories of the evidence squares with what the lawyers told you yesterday, as their memory of it, you may accept what they said. But if you have a different recollection of the evidence you are bound by your oath to reject what they said, and rely on your own memory.

Now, when I say your own memory, I mean your collective memory. One of you can help another to stimulate his memory; to help refresh his recollection. Sometimes jurors are only out a few minutes, and following the script that they see on TV every night, some juror sends a note and says he wants to have the testimony of witness A or witness B, or sometimes four or five witnesses reread.

How, in that connection, there is no transcript of this testimony at all. It all rests in those stenotype notes which you see Mr. Sheffer taking there, and it takes time to find it. We can do it if

it it necessary, and if any of you strongly feels and sends a note through your foreman that you want some testimony reread, we can do it. But it takes time, and before you resort to that process, please try to help stimulate and refresh each other's memory. It is your collective memory of the evidence that control

Nov, William L. Holmes, a Special Agent of the FBI, was allowed to testify as an expert on the bookmaking or gambling business. An expert may testify and give his opinion on a subject concerning which he has some special knowledge. This is allowed on the theory that the advice of one experienced and versed in a technical or a special subject will help the jury in reaching its decision. You may consider the expert's qualifications and opinion, and weigh his reason, if any, and give his testimony such weight as you feel it deserves. An expert opinion is purely advisory and you may reject it entirely if in your judgment the reasons given are not convincing. That determination rests with you.

Now, one of your most important functions is to decide which witnesses you will believe, and this is so as to every witness, whether called by the government, whether a government agent or whether a witness called by the defense.

number of witnesses called, or by the length of the trial. You are concerned not with the quantity of the evidence, but with the quality of the evidence. The first test which you should apply in detarmining the truthworthiness of a witness is to measure what he says against your plain, everyday, common sense. You are not bound to believe unreasonable statements, or to accept cestimony that defies your common sense or insults your intelligence, just because the statements are made under oath in a public courtroom.

You saw the witnesses in this case. In deciding whether to believe a witness you should consider his conduct and his manner on the stand. I saw you watching these witnesses with particular care as they were testifying. Obviously, you were sizing them up. How did the witness impress you? Was the witness being frank with you? Was his version of the evidence straightforward? Was he trying to conceal or hold back some testimony? Was he just parroting answers? Does he have any motive to testify falsely? Is he interested in any way in the outcome of this case? How strong or weak was his memory of important events? Did he forget the unforgettable?

In short, can you rely on him?

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Can you trust him! was he hostile or friendly toward either side in this case?

know the facts about which he testified and the probability or improbability of what he said in light of the totality of the circumstances here. How does his testimony add up when considered with all of the other evidence? How far does his story check out with the recordings and with documentary evidence? Are there any inconsistencies in his testimony and, if so, how important are they?

Now, if you find that any witness has deliberately and wilfully lied with respect to any material fact in his testimony offered at this trial, you may follow either one of two courses: You may accept as much of the witness' testimony as you believe, or you may reject, if you wish, his entire testimony.

Now, none of the defendants took the stand and testified in this case. A defendant is not required to take the stand and testify in his own behalf. He has no burden of proof whatever to sustain in this case. Each defendant has denied the charges made against him by his plea of not guilty, and he is presumed to be innocent. The fact that he has not

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in any manner. You may not permit that fact to weigh in the slightest degree against the defendant, nor should that fact even enter into your discussions or your deliberations in any way.

Now, before discussing the crimes charged here, I want to remind you that an indistreent is a mere accusation. It is not evidence of the truth of the charge made and you are to draw no inference of guilt from the mere fact that the defendant has been indicted. An indictment simply means that the defendant has been accused of a crime and, as I told you earlier, each defendant here has denied the charge made against him by his place of not guilty, and he has no burden of proof whatever to sustain in this case. He is under no obligation to produce any witnesses. He is presumed to be innocent, and this presumption of innocence continues throughout the trial and during the deliberations of the jury. This presumption of innocence is overcome when and only when the government establishes the guilt of a defendant beyond a reasonable doubt.

Now, what do I mean by beyond a reasonable doubt is a doubt that is based upon reason, a reason

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which appears in the evidence or in the lack of evidence. It is not some vague, speculative, imaginary, conceivable doubt, nor a doubt based upon emotion, sympathy, or prejudice, or upon what some juror might regard as an unpleasant duty.

The government is not required to prove a defendant guilty beyond every conceivable or possible doubt, nor to an absolute or mathematical certainty, because such measure of proof is usually impossible in human affairs.

You should review all of the evidence as you remember it. Sift out what you believe. Discuss it, analyze it; weigh and compars your view of the evidence with your fellow jurors. If that process produces a solemn belief or conviction in your mind such as you would be willing to act upon without hesitation if this were a matter of importance to your-self, then you may say that you have been convinced beyond a reasonable doubt.

On the other hand, if, after going through that process, your sind is wavering or is so uncertain that you would hesitate before acting if this were an important matter of your own, then you have not been convinced beyond a reasonable doubt, and your verdict must be not guilty.

Now, the indictment in this case contains
fit ounts. Each of those counts charges a separate
offense or crime, and each count must be considered
and decided by you separately.

The indictment names six defendants, all of whom are on trial before you. They are Samuel L. Abare, also known as "Sam;" Joseph D'Agostino, also known as "Joey;" Richard Michael Beach, also known as "Harpo;" Charles B. Grezo, also known as "Sonny;" Louis M. Amerano; and Raymond Czer M. ki, also known as "Baldy."

Now, the guilt or non-guilt of each defendant must be determined by you separately as to each count in which he is named in this indictment.

Although, as I will explain to you shortly, in considering a defendant's guilt or non-guilt, you may have to determine the nature of the participation, it any, of other persons, and this is particularly true when I come to discuss Count II, and when we discuss Count I.

Now, in the determination of guilt or non-guilt, you must bear in mind that guilt is personal. There is no such thing under our system of justice as guilt by mere association. The guilt or non-guilt of the defendant on trial before you must be determined

separately with respect to him, solely on the basis of the evidence presented against him or on the lack of evidence. Let us turn to the specific charges now against these defendants, and we will first discuss Count II, because all of the remaining counts are based on the legal principles and concepts which apply to Count II.

of the defendants on trial with violating a law of the United States, which makes it a crime for anyone to conduct, finance, manage, supervise, direct or own all or part of an illegal gambling business.

In order to convict the defendant whom you are considering on Count II, the government must prove the following three facts beyond a reasonable doubt:

First, that the gambling business must be in violation of the law of the State of New York.

persons involved in its conduct, and third, it must be in substantially continuous operation for more than 30 days, or have a gross revenue of \$2,000 or more in a single day.

Now, the first fact which the government

business which was being operated was an illegal gambling business. The term "an illegal gambling business" means a business which is a violation of the law of the State of New York, since there is no dispute here that the sports bookmaking operation and parlay business involved operated in the Northern District of New York and elsewhere.

Now, the New York law provides that a provide state a provide state a provide state and is guilty of promoting gambling in the second degree when he knowingly advances or profits from unlawful gambling activity. You will note that I have said that a defendant must knowingly advance or profit from illegal gambling activity. The indictment charges that the defendant acted unlawfully and knowingly. Knowingly does not mean that a defendant must be aware that his conduct is criminal or that it violates either state or federal law. It simply means that he must have known what he was doing, that he was acting voluntarily, deliberately and on purpose, and not because of mistake, accident, carelessness or other innocent reason.

Unlawfully or illegally simply means that the act which the defendant is doing is prohibited by law.

Now, a person advances gambling activity

when, acting other than a player, he engages in conduct which materially aids any form of gambling activity.

A person profits from gambling activity when, other than as a player, he accepts or receives money or other property pursuant to an agreement or understanding with any person, whereby he participates or is to participate in the proceeds of gambling activity.

Now, a player means a person who engages in any form of gambling solely as a contestant, or better, without receiving or becoming entitled to receive any profit therefrom, other than personal gambling winnings, and without otherwise rendering any material assistance to the establishment, conduct or operation of the perticular gambling activity.

Thus a person who gambled at a social game of chance on equal terms with the other participants does not otherwise render material assistance to the establishment, conduct or operation thereof by performing without fee or remuneration, acts directed toward the arrangement or the facilitation of the game, such as inviting persons to play, permitting the use of the premises and supplying cards or other equipment used therein.

A person who engages in bookmaking is

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not a player. Bookmaking means advancing gambling activity by unlawfully accepting bets from members of the public as a business rather than in a casual or personal fashion upon the outcome of future contingent events.

Now, the term business, as used in these laws, is to be given its ordinary normal meaning. In a sports bookmaking operation and parlay business, which accepts bets from members of the public, is an illegal gambling business prohibited by New York law.

Now, the mere fact, however, that you may find that one or more of the defendants was operating an illegal gambling business in violation of New York law is not enough to find any defendant guilty. Before you can convict any defendant of violating the federal law applicable here, you must find two other facts. One of these, the second fact which the government must prove beyond a reasonable doubt, is that the illegal gambling business involved five or more persons who conducted, financed, managed, supervised, directed or owned all or part of such business.

The word "conduct" means to carry on or to operate, or to cause to function, and refers both to high lavel bosons and to atreet level employees.

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It includes all levels of personnel who participate in an illegal gambling business regardless of how minor their roles, and whether or not they are called writers collectors, runners, clerks, or employees. It includes agents or middlemen who accept bets from others, and pass them along to a single, central gambling business. It includes otherwise outside bookmakers who accept bets from their own customers, and lay them off to a single central operation on a regular, ongoing, consistent and substantial basis.

Outside or independent bookmaker who places a single, or isolated bet for his own customer, or who makes isolated and casual, rather than substantial and regular lay-off bets, or who occasionally exchanges line information with the central gambling operation.

In short, a conductor includes all persons who participate in the operation of a gambling business, including those who participate in a network composed of other bookmakers, who join in a cooperative and consistent ongoing relationship with a single central gambling enterprise, and pool their bets, either through fairly regular layoffs, or profit sharing, or consistently and continuously share

line information, or aystamatically transfer a

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substantial amount of business, or part of the action, or give advice toncerning gambling operations.

of an illegal gambling business does not conduct the illegal gambling business, even though he engages in the illegal gambling activity by placing a bet or bets, and even though he may be a regular and even a daily customer of the gambling business, and notwithstanding the fact that he may play or bet large amounts of money.

bettor, at the player or the customer, but at those who conduct the illegal gambling business.

Now, "to finance" means to supply the capital or the financial backing or money to establish or operate or run the business. "Manage" means to run the business, to have charge of, to direct or to have an important voice in the direction and policies of the business. "Supervise" means to oversee or boss the operation. "Direct" means to guide or control or run. "Own" means to have ownership or title in some demonstrable way, such as a share in the profits of the business.

Now, you will notice that in stating the acts, such as conduct, supervise, finance, and so forth,

which are prohibited by the statute, I have used the word "or" he must conduct, "or" supervise, "or" finance, and so on. It is not necessary, therefore, for the government to prove that the defendant whom you are considering did all of these prohibited acts. It is, in itself, enough if you find that he knowingly did any one of them. Nor is it necessary for the government to prove that five or more persons did all of the prohibited acts.

For example, it would be sufficient if the government proved, beyond a reasonable doubt, that three persons conducted the gambling business, and that two others financed it; that would give you the requisite five.

The government contends that all of the defendants now on trial, plus James V. Colloca and Leon Cook, for a total of eight persons either conducted or financed or managed, or supervised, or directed, or owned, all or part of the gambling business. And it is for you to decide whether that is the fact.

The third fact which the government must prove beyond a reasonable doubt is that the illegal gambling business was a gambling business which had been or remained in substantially continuous operation

for a period in excess of 30 days, or that it received profits of more than \$2,000 in any single day.

evidence shows that the sports bookmaking operation and parlay business involved here was in substantially continuous operation from about September 1, 1973 through June 30, 1975. "Substantially continuous operation for more than 30 days" does not mean that the business must operate every single day for at least 31 consecutive days, or that it must necessarily operate in the same physical location. Rather it means that the same filegal gambling business must operate on a regular basis, even at many different locations, for a period in excess of 30 days.

Now, you must consider all of the evidence and each defendant separately. If, as to the defendant whom you are considering, you find that the government has failed to prove beyond a reasonable doubt each of the three facts which I have instructed you the government is required to prove, then you must find that defendant not guilty on Count II.

On the other hand if, as to the defendant whom you are considering, you find that the government has proved beyond a reasonable doubt all three of the facts which I have instructed you the

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government is required to prove, then you should convict that defendant on Count II.

The law involved in these counts makes
it a crime for any person to use any facility, such as
a telephone in interstate commerce, with the intent to
promote, manage, establish, carry on or facilitate
the promotion, management, establishment or carrying
on of any business enterprise involving gambling which
operates in violation of state or faderal law and,
thereafter to perform or attempt to perform any act of
promoting, managing, establishing, carrying on or
facilitating the promotion, management, establishment
or carrying on of the gambling enterprise.

that the defendant D'Agostino and Camerano violated this law by using telephone facilities between the State of New York, to disseminate sports line information for a gambling enterprise which was operating in violation of state and federal law. These counts also charge that the defendant Grezo aided and abetted D'Agostino in committing the crime.

specifically, Count III alleges such a telephone call between D'Agostino and Camerano on or

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about January 4, 1975 at approximately 12:28 p.m.

Count IV alleges such a telephone call between those two defendants on or about January 4, 1975 at approximately 5 p.m.

and Count V alleges such a telephone call between those two defendants on or about January 5 at approximately 12:30 p.m.

V, you again must consider each count, and each defendant named in that count separately. We will first consider D'Agostino and Camerano.

In order to convict either or both of them on the count which you are considering, the government must prove the following three facts beyond a reasonable doubt:

phone facility to talk to someone in another state with the intent to promote or to facilitate the promotion, management, establishment or carrying on of a business enterprise involving gambling.

sovernment to prove that the defendant had knowledge that the telephone call was from out of state or that he knew that by making or accepting the call he was violating the law.

intent, it is necessary for the government to prove that the interstate facility, here, an interstate telephone facility, was in fact used and that the defendant used it, or caused it to be used, and that he intended to promote, or to facilitate the promotion, management, establishment or carrying on of the illegal gambling activity.

Word "or", in listing the prohibited acts and the prohibited intent. The government need, therefore, only prove that the defendant's intent was to do any of the things that I have listed.

Now, the government contends that the purpose of the interstate telephone calls between Nevada and New York was to disseminate line information. It is sufficient, if you find that the defendant intended the purpose of the line information was to facilitate or in any way help or further the gambling activity. It is not necessary that the government prove that the line information was absolutely essential to the operation of the gambling activity.

The second fact which the government must prove beyond a reasonable doubt as to each of Counts III through V is that the gamoling enterprise was in

you will recall and apply my earlier instructions on those subjects in discussing count II, that is, that in the State of New York a person is guilty of promoting gambling if he advances or profits from gambling activity and that advancing gambling activity essentially is any kind of conduct in any phase of the gambling operation, no matter how small or low level, except that of a better or player.

for a gambling business is advancing gambling activity under this law.

You will also recall my earlier instructions as to what kind of gambling enterprise is in violation of the law of the United States, and if you find in Count II that such an illegal gambling business existed, then that finding alone will satisfy the second fact with respect to Counts III through V.

prove beyond a reasonable doubt as to each of Counts

III through V is that after the alleged interstate

telephone conversation, the defendant knowingly

performed or attempted to perform any act of promoting

or of facilitating the promotion, management, es
tablishment or carrying on of a business enterprise

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I have used the word "or". The government need only prove any single prohibited act in furtherance of the gambling enterprise in order to satisfy this third fact.

we have been referring only to the defendants

D'Agostino and Camerano who are alleged to be the

actual participants in each of the three interstate

telephone calls. Under the law, D'Agostino and

Camerano are called "principals" in the criminal

offense.

who is named as an aider and abettor in each of Counts III through V.

and abetted in the offense charged in each of Counts

It through V, by discussing line problems with

D'Agostino and by using the line information provided

to him by Camerano, through D'Agostino. The

government does not have to prove that Grezo was a

participant in any interstate relephone call, or that

Grezo had knowledge that an interstate facility was

being used.

simply obtaining line information in order to play the middle, and that he was a more player. That issue is for you to decide.

The law provides that a person who sids and abecs, commets, commeds, induces or procures the commission of a crime by another is just as guilty of that crime as if he consitted it bimself.

Accordingly, you may find the defendant Oremo guilty of the crime charged in the count which you are considering, if you find beyond a researchla doubt that he aided and chekted D'Agostine in the commission of the crime charged in that count, and that he was acting other than as a player in seeking or using line information.

Before you can convict Greso for aiding and aberting, you cust find that the crime charged in the count which you are considering was committed by another, here D'Agostino, and that Greso consciously associated himself with the criminal venture, with the intent that his conduct would help him succeed.

You must be convinced beyond a reasonable doubt that Grezo was knowingly and intentionally doing something to aid the crime or to forward the crime of the other person; here "Agostino; that Grezo was a conscious, knowing participant in the crime, with a

stake in its success, rather than a mere witness, player, spectator or bystander on the scene of a crime when it was committed by another, D'Agostino.

With respect to each of Counts III

through V, you must consider all of the evidence and
each count and each defendant separately. As to the
defendants, D'Agostino and Carerano, if you find as to
the defendant whom you are considering that the
government has failed to prove beyond a reasonable
doubt each of three facts which I have instructed you
it is required to prove, then you must acquir that
defendant on that count.

On the other hand, as to the defendants
D'Agostino and Camerano, if you find that the government has proved beyond a reasonable doubt all three
of the facts which I have instructed you it is
required to prove, then you may convict that defendant
on that count.

As to the defendant Grezo, if you find that the government has failed to prove beyond a reasonable doubt each of the three facts which I have instructed you it is required to prove as to the defendant D'Agostino on the count which you are considering, or that the government has failed to prove that Grezo knowingly aided and abotted another,

D'Agostino, in the commission of the crime, then you must find Grezo not guilty on that count.

On the other hand, as to the defendant Grezo on that count.

We will now turn to the first count of the indictment which charges a conspiracy.

on trial, together and with each other and with James V. Colloca and Leon Cook, who are named as co-conspirators, and with numerous other persons whose exact identity are to the Grand Jury unknown, with conspiring to conduct, finance, manage, supervise and own all or part of am illegal gambling business.

Here, again, you must consider each defendant separately. In order to convict the defendant whom you are considering on Count I, the government must prove the following three facts beyond a reasonable doubt:

First, the existence of a conspiracy as

charged in the indictment, sometime between September 1, 1973 and June 26, 1975, in the Morthern District of New York, for the purpose of committing the crime of conducting, financing, managing, supervising, directing, or owning all or part of an illegal gambling business as I have defined that crime in my discussion of Count II. Specificially, the government must prove the existence of a conspiracy which contemplated the crime of conducting an illegal gambling business which was prohibited by the law of New York, which involved or would involve five or more persons, and which was intended to continue in operation for more than 30 days, or to have a gross revenue of at least \$2,000 in any single day.

Second, that the defendant whom you are considering joined the conspiracy with knowledge of it: illegal purpose.

Third, that any member of the conspiracy of the distance of the overt acts set forth in the indictment. I will now discuss what these facts mean.

The first fact which the government must prove beyond a reasonable doubts is the existence of the conspiracy. Now, what is a conspiracy? A conspiracy, for our purpose, is simply a combination

or an agreement among two or more people to violate
the law as charged in this indictment. Thus, a
conspiracy is a kind of a partnership in criminal
purposes and it is usually secret in its origin and in
its execution.

or agreement among two or more people to violate the law. This does not mean that two or more persons sust exect and sign some kind of an agreement, or that they must sit down and agree in so many words on what their unlawful scheme is to be, or how they are going to carry it out.

When persons enter into a combination or agreement to violate the law, only fools would put it in writing. Each is necessarily left to implicit understanding and tacit understanding. Conspirators do not proclaim their plot, or publicly announce their purpose. The very nature of a conspiracy calls for secrecy and intrigue.

The first fact is satisfied, therefore, if you find beyond a reasonable doubt that any two or more people in any way intentionally combined, or agreed to a common plan knowingly and intentionally to conduct, finance, manage, supervise, direct or own part of an illegal grabling business probibited by

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New York law involving five or more people and intended to continue for more than 30 days, or to have a gross revenue of at least \$2,000 in any single day.

Now, in determining whether there was such a combination, understanding or agreement hare, you should consider all of the evidence about each defendant's conduct, acts and statements. You should consider not only what was said or done, but also how it was said or done. From the point of view of the law, there is danger to the public when two or more people combine to do something that is unlawful. The danger is greater than if the lone criminal acts by himself because in numbers there is strength, and two or more people are able to accomplish crimes that are more difficult and more harmful to the public.

Because of this, a conspiracy to commit
a crime is a distinct crime, in and of itself, separate
and spart from the crime which it is the object of the
conspiracy to accomplish. In other words, the agreement to enter into this illegal gambling business, in
and of itself, is a crime, whether or not the
defendants ever actually carried out their plan,
whether or not they ever, in fact, entered into an
illegal gambling business. Thus you may find that a
conspiracy exists, even though the purpose of the

conspiracy is never accomplished.

Proof, however, of the accomplishment of the purpose of the conspiracy is probably the most persuasive evidence of the existence of the conspiracy, itself. The period of time charged in the crime here runs from September 1, 1973 through June 26, 1975.

It is not necessary for the government to prove that the conspiracy alleged started and ended on those specific dates. It is sufficient if you find that the conspiracy was formed, and that it existed for some substantial time within the period set forth in the indictment.

Now, you will recall that the second fact which the government must prove beyond a reasonable doubt is that the defendant joined the conspiracy with knowledge of its illegal purpose.

when I say "joined the conspiracy," I do not mean that a defendant has to file some kind of an application, or that he has to sit down and say, "Let me in" or anything of that nature. However, before one can be found to be a member of a conspiracy, he must know of the existence of the conspiracy, and of its unlawful purpose to conduct an illegal gambling business, as charged in this indictment and as I have defined the crime of conducting an illegal gambling

business in our discussion of Count II, and he must voluntarily and knowingly join in the plan with an intent to combine with others to violate the law, and he must knowingly promote the scheme, or have some kind of a stake in its success.

In this connection, you will recall my earlier instructions as to what constitutes knowledge, willful and intentional conduct in discussing Count II, and apply those instructions here.

Here, in determining the knowledge and intent of a defendant, it is obviously impossible to look into his mind. However, intent and knowledge may be inferred from the way a defendant acts, by his statements, and by all the surrounding circumstances. Thus, the old adage "Actions speak louder than words" applies here.

In this connection, you may not rely upon statements of one defendant to find that another defendant was a member of the conspiracy. You must determine the membership of a particular defendant solely from the evidence concerning his own actions, his own conduct, his own statements.

The mere fact that a defendant may witness a crime, or be present when a crime is committed by others, or that he may attend a meeting or unwittingly

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assist the criminal venture, or have an association or friendship with a member of a conspiracy, or even though he participates in an isolated gambling transaction with a member of a conspiracy is not, in itself, enough to make him a conspirator unless you first find, beyond a reasonable doubt, that he knew of the conspiracy and that he deliberately and intentionally joined in the criminal venture with knowledge of its unlawful purpose and with a stake in its success.

Now, one may become a member of a conspiracy without knowledge of all of the details, or all of the operations of the conspiracy. One defendant may know only one other member of the conspiracy. Yet if he knowingly cooperates to further the illegal purpose of the conspiracy, with knowledge that others have joined together to violate the law, he becomes a member, although his role may be only an insignificant or minor one.

Now, if you find that a defendant did

join the conspiracy with knowledge of its illegal

purpose, then he is bound by what other say and do in

furtherance of the objects of the conspiracy, even

though he is not present, provided he is still a

member. You will remember that each conspirator is the

agent or partner of every other conspirator.

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What one does to promote the illegal plan or illegal agreement binds every other member of the conspiracy.

Now, the third fact which the government must prove beyond a reasonable doubt is the commission by any conspirator of at least one overt act in furtherance of the objects of the conspiracy. An overt act means any act by any member of the conspiracy in an effort to accomplish some purpose of the conspiracy spiracy.

an overt act is because a person might agree to commit a crime and then change his mind. Therefore, before a defendant can be convicted of a conspiracy, one or more of the conspirators must have taken at least one step, or performed at least one single act, toward carrying out the unlawful intent to commit the crime.

That step may, in itself, be perfectly innocent.

The indictment in this case enumerates seven overt acts allegedly done in furtherance of the conspiracy in order to effect the objects of the conspiracy, and they are:

One, that on or about October 30, 1974, Samuel Ebare and James J. Colloca met in the Chartroom, in Oswego, New York, and had a discussion concerning a

debt.

Two, on or about November 5, 1974,

Joseph T. D'Agostino spent approximately one and a

half hours at the residence of Leon Cook at 214 Golf

Road, Syracuse, New York, conducting the aforesaid

illegal gambling business over Cook's telephone.

Three, on or about December 21, 1974,

Joseph T. D'Agostino had a telephone conversation with

Charles T. Grezo about matters relating to the operation

of the aforesaid illegal gambling business in which

D'Agostino accepted lay-off wagers from Grezo.

Four, on or about January 3, 1975,

Joseph T. D'Agostino distributed line or olds

information over the telephone to Raymond Czerwinski,

and they discussed other matters relating to the

operation of the aforesaid illegal gambling business.

Five, on or about January 4, 1975,
Richard Michael Beach and Joseph T. D'Agostino had a
telephone conversation in which they discussed the
status of the aforeseid illegal gambling business
concerning a particular game, and during which
D'Agostino gave Beach the line, or odds information on
numerous sporting events.

Six, on or about January 5, 1975, Louis
1. Camerano telephoned Joseph T. D'Agostino from

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Las Vegas, and Camerano gave D'Agostino line or odds information on numerous sporting events for use in the aforesaid illegal gambling business.

Seven, on or about January 6, 1975,

Joseph T. D'Agostino and Samuel Ebare had a telaphone

conversation in which Samuel L. Ebare gave Joseph T.

D'Agostino instructions with respect to the pay-off of

a winning better in the aforesaid illegal gambling

business, and they arranged a meeting.

Now, the government contends that the meetings and telephone calls referred to in these overt acts have been proved beyond a reasonable doubt from the tape recordings, and from physical surveillance by FBI agents. That, of course, is for you to decide.

charged are innocent, in and of themselves. Nevertheless, if an overt act was performed by any member of the conspiracy during the existence of the conspiracy, and in furtherance of its unlawful purpose, then that act was sufficient to satisfy the government's burden of proving the third fact.

The government must prove to you beyond a reasonable doubt that at least one of the overt acts which I have just read to you was committed by one or more of the conspirators and that that act was done in

furtherance of the conspiracy.

Now, in this connection, the government does not have to prove that all of the defendants committed an overt act, or that all of the overt acts were committed. It is required to prove one overt act by any one member of the conspiracy.

alleged in the overt acts are substantially similar within a few weeks of the dates mentioned in the testimony. The same is true as to the place mentioned in the overt acts. It must be substantially similar. There is no requirement that it be exactly as alleged in the indictment.

with respect to Count I, therefore, you must consider all or the evidence and each defendant separately. If, as to the defendant whom you are considering, you find that the government has failed to prove beyond a reasonable doubt each of the three facts which I have instructed you it is required to prove, then you must acquit that defendant on Count I.

On the other hand, if as to the defendant whom you are considering, you find that the government has proved beyond a reasonable doubt all three of the facts which I have instructed you it is required to prove, then you should convict that defendant on Count

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You are instructed that the question of possible punishment of a defendant in the event of a conviction is no concern of yours, and it should not enter into or influence your deliberations in any way. The duty of imposing sentence, in the event of a conviction, rests exclusively upon the Court. The function of the jury is to weigh the evidence in the case, and determine the guilt or non-guilt of the defendant solely upon the basis of that evidence.

When you retire to the jury room, you should elect one of your number to serve as your foreman or forelady, and to address whatever communications, or to announce your verdict to the Court.

Treat one another with consideration and respect, as I know that you will. If differences of opinion arise, your discussions should be dignified, calm and intelligent. Your verdict must be based on the evidence and the law, the evidence which was presented in this case, as you collectively remember it, and the law as I have given it to you in this charge.

You are each entitled to your own No juror should acquiesce in a verdict

coinion.

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against his individual judgment. Nevertheless, I would point out that no one should enter the jury room with such pride of opinion that he would refuse to change his or her mind, no matter how convincing or how parsuasive, or how intelligent the argument of another juror or jurors.

very heart of our American Jury process, and your deliberations should be approached in that spirit.

Talk out your differences. Each of you should, in effect, decide the case for himself or herself, after thoroughly reviewing the evidence, and frankly discussing it with your fellow jurors, with an open mind, and with a desire to reach a verdict. If you do that, you will be acting in the true democratic process of the American Jury system.

There are 12 of you on this jury. The alternate jurors will be excused before you retire for your deliberations. Any verdict must be the unanimous verdict of all of you as to each defendant and each count in which that defendant is named, and it must represent the honest conclusion of each of you.

I submit the case to you with every confidence that you will fully measure up to the cuth which you took as members of the jury to decide the

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issues submitted to you fairly and impartially, and without fear or favor.

And to guide you in your deliberations,

I will send in a copy of the indictment.

Now, I submit the case to you with every confidence that you will fully measure up to your oath.

Now, members of the jury, if you find that the government has failed to establish the guilt of any defendant beyond a reasonable doubt, you should find that defendant not guilty.

If you find that a defendant has not violated the law, you should not hesitate, for any reason, to render a verdict of not guilty as to him.

But on the other hand, if you find that the government has established the guilt of a defendant beyond a reasonable doubt, you should not hesitate, because of sympathy or any other reason, to render a verdict of guilty.

Your foreman or forelady then will return a verdict, an oral verdict in open court of either guilty or non-guilty as to each defendant on each count in which that defendant is named.

Are there any exceptions, gentlemen? If so, I will hear you at the beach.

MR. FISHER: Your Monor, could we

U.S. COURT REPORTERS
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U. S. DISTRICT COURT. N. D. OF N. Y. FILEDOM UNITED STATES DISTRICT COURT JUN 2 - 1976 NORTHERN DISTRICT OF NEW YORK J. R. SCULLY, Clerk AUBURN UNITED STATES OF AMERICA, -V3-75-CR-86 SAMUEL L. EBARE, also known as "Sam" JOSEPH T. D'AGOSTINO, OPINION also known as "Joey" RICHARD MICHAEL BEACH, also known as "Harpo" CHARLES P. GREZO, also known as "Sonny" LOUIS M. CAMERANO RAYMOND CZERWINSKI, also known as "Baldy" Defendants.

APPEARANCES:

Paul R. Shanahan, Esq. Attorney for defendant Ebare Onondaga Savings Bank Building Syracuse, N.Y. 13202

John R. Rinaldi, Esq.
Attorney for defendant D'Agostino
University Building
Syracuse, N.Y. 13202

David B. Weinstein, Esq. Attorney for defendant Beach 410 Metcalf Plaza Auburn, N.Y. 13021 Palmiera, Passero & Crimi By: Norman A. Palmiera, Esq. Attorneys for defendant Grezo 700 Wilder Building Rochester, N.Y. 14614

Pappas & Cox
By: C. Andrew Pappas, Esq.
Attorneys for defendant Czerwinski
Gridley Building
103 East Water Street
Syracuse, N.Y. 13202

James M. Sullivan, Jr., Esq.
United States Attorney for the
Northern District of New York
By: Jeffrey C. Fisher, Esq.
Special Attorney
Department of Justice
Federal Building
Syracuse, N.Y. 13201

MacMAHON, District Judge.*

Defendants Grezo, Camerano, Czerwinski, and Beach move to suppress all evidence derived from the interception, with court approval, of certain wire communications. Defendant Beach also moves to suppress certain physical items seized pursuant to a search warrant.

Of the United States District Court for the Southern District of New York, sitting by designation.

The movants, along with co-defendants Ebare and D'Agostino, are charged with conducting an illegal gambling business, in violation of 18 U.S.C. § 1955, and with conspiracy, 18 U.S.C. § 371.

Defendants claim, on two somewhat contradictory theories, that the wiretap evidence must be excluded at trial since the court authorization was defective. First, they contend that the order was issued without probable cause to believe that any individual was either conducting an illegal gambling business or conspiring to commit such an offense. Simultaneously, defendants contend that the application and order failed to identify as targets of the surveillance all persons whom the government had probable cause to believe were involved in the illegal gambling business, as required by Sections 2518(1)(b)(iv) and 2518(4)(a) of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C.

Judge Edmund Port signed an order on December 19, 1974 authorizing the interception of wire communications to or from the telephone located at the residence of Joseph D'Agostino, and any wire or oral

ment seeks to introduce statements intercepted pursuant to that order on both telephones between December 19, 1974 and January 7, 1975. The order was based on an affidavit of Special Agent Robert Kolevar of the FBI which purports to set forth probable cause to believe that Samuel Ebare, Joseph D'Agostino, Leon Cook, James Colloca, Frank Cali, Richard Michael Beach, and others as yet unknown were involved in an illegal gambling business.

Kolevar recites information from three confidential sources. Source One identifies Ebare as the head man in the gambling operation, D'Agostino as the telephone man with whom Source One placed bets, and Cook as the collection and settle-up man. Kolevar also identifies the telephone at D'Agostino's residence as the number he called to place his bets. Source Two identifies Colloca as a bookmaker who worked as an agent for D'Agostino and Ebare. Source Three conveys information he had obtained from a third party, Source A, a close friend of Source Three and of D'Agostino. Source Three disclosed the identity of Source A to Kolevar.

business had revenues in excess of \$75,000 per week; there were two telephone men besides D'Agostino; and Beach worked primarily as a bookmaker and collector but took on other responsibilities, at Ebare's direction. Beach also met every week with Ebare, D'Agostino, and others to discuss the administration of the business, including settlement of debts. Both Ebare and Beach were known to use the telephone at the Ebare residence to arrange meetings with customers. Source A said that Cali worked primarily as a collector.

Kolevar's affidavit also contains surveillance reports of meetings between the alleged conspirators, records of the past gambling convictions of Ebars, Cook, and Cali, and a record of conviction of Beach for grand larceny.

Defendants contend that the affidavit of
Kolevar does not establish probable cause to believe
that any individual was conducting an illegal gambling
operation, or that the telephone at the D'Agostino
residence was being used to further that activity,

Since the information obtained through Sources One and Three was not shown to be reliable.

When probable cause is sought to be established through information supplied by a non-disclosed informant, a judge or magistrate must be given sufficient data to enable him to determine whether the information is reliable. This includes the circumstances by which the informant came by his information and the reasons why the individual informant should be trusted. Defendents claim under the second prong of this reliability test that neither Source One nor Source A was shown to be trustworthy.

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although unnamed, supports reliability. The central fact that Ebare was the head of an extensive gambling operation was supplied by all three sources and supports the credibility of each. Moreover, Source One's information that D'Agostino was a bookmaker for Ebare is specifically corroborated by Sources Two and Three.

Trustworthiness may also be established if the informant has previously supplied reliable information to law enforcement agencies. Kolevar's affidavit stated

that Source One had given information in the past which was accurate and had led to several arrests. Judge Port was, therefore, given sufficient data to assess the reliability of Source One, to determine that there was probable cause to believe that Cook, D'Agostino, and Ebare were engaged in an illegal gambling operation, and that bets were being laced through D'Agostino's telephone.

Defendants next contend that since the information supplied by Source Three is double hearsay, it is inherently unreliable. Information obtained by one informant from a second unidentified source, however, may be sufficient to support a finding of probable cause if the underlying circumstances are such that the information appears credible.

The affidavit states that Source Three had been providing the FBI with information about gambling activities in the Syracuse area for over three years, much of it obtained by Source Three from Source A. That information was accurate and resulted in twenty arrests and four convictions. Considering this history of reliability along with the partial corroboration by Sources One and Two, the Kolevar affidavit

contained sufficient data to support the belief that Ebare, Beach, and Cali were involved in illegal gambling activity.

We find, therefore, that there was probable cause to sustain the wiretap order of December 19, 1974.

Defendants' second challenge to the validity of the December order is premised on Title III of the Organized Crime Control Act. The Act requires that an application for authorization to intercept a wire communication must include the identity, if known, of the person who has committed the offense for which the order is sought and whose communications will be intercepted. The order authorizing tha 18 U.S.C. § 2518(1)(b)(iv). interception must specify the person, if known, whose commications are to be intercepted. 18 U.S.C. § 2518(4)(a). Defendents contend that since the government had probable cause to believe that Ebare, Beach, Cook, Colloca, Cali, and D'Agostino were involved in the illegal gambling activity, but identified only D'Agostino as the target of the electronic surveillance, the affidavit and interception order were defective and the evidence should be suppressed.

General participation in the activity under investigation may not be sufficient to require identification under the Act. The government must also have probable cause to believe that the person will be using the telephone for which the order is sought.

In the instant case, the only conspirator who had been linked to the tapped telephone was D'Agostino with whom Source One had placed bets. Both Source One and Source A reported that Ebare did not use the telephone to discuss gambling business in order to insulate himself from being picked up on a wiretap. Colloca and Cook were bookmakers for Ebare who accepted bets through their own telephones. Although Source Two knew that Colloca called D'Agostino about gambling matters, there was no information that the calls were made to the number sought to be intercepted. There was also no information that Beach and Cali, whose primary job was to settle accounts with clients, would use the D'Agostino telephone. It is, therefore, unreasonable to require that the government should have predicted that all alleged conspirators would use the intercepted wire.

The conservative approach of the government in identifying only the individual whose conversations it knew would be intercepted is understandable. If the other participants had been listed as targets and it should later develop that there was no probable cause to assume they would use the particular telephone, the interception would violate the constitution as well as the Act. Moreover, the application and order fully reveal the identities of all individuals whom the government had probable cause to believe were involved in the criminal activity. Since the Act requires that all persons mentioned in the order must be given notice of the wire interception, there was no attempt by the government to evade this requirement.

We find that failure to specify all alleged conspirators as targets of the electronic surveillance did not violate the section of the Act which requires identification of the person whose communications are to be intercepted and does not require suppression of evidence gained as a result of the December 19 order.

Judge Port signed a second order on January 11, 1975 extending the wiretap authorization at the D'Agostino residence. Defendants' challenge to this second order is premised on a suppression of evidence obtained from the December tap and, therefore, must also fail.

Defendant Beach moves to suppress certain items found on his person during a warrant-authorized search.

Defendant claims that the warrant was defective since it was issued without probable cause.

The affidavit in support of the application for the warrant was made by Agent Kolevar. It contains intercepted conversations between D'Agostino and a man who calls himself "Harpo" about how the betting on a certain game was going. Law enforcement investigators recognized the voice of "Harpo" as belonging to Beach. Moreover, attached to the affidavit and incorporated in it were copies of the two earlier affidavits submitted to Judge Port in support of the wiretap order.

As a result of information obtained through the informants, as well as the physical and electronic surveillance, there was reason to believe that Ebare was head of an extensive gambling business which kept physical records containing betting information regarding individual accounts. Beach, who was identified by Source Three in the first wiretap affidavit

pected to carry large amounts of cash and records of accounts and debts of those individuals who dealt with the organization. We find, therefore, that there was probable cause to support the search warrant.

Accordingly, defendants' motion to suppress all wiretap evidence is denied. Defendant Beach's motion to suppress items seized pursuant to a search warrant is also denied.

So ordered.

Dated: Auburn N. Y.
June 6, 1976

LLOYD F. MacMAHON

FOOTNOTES

- See United States v. Principia, Docket Nos. 75-1175, 75-1176, 75-1177 (2 Cir. Mar. 4, 1976), slip opinion at 2337-2406.
- Spinelli v. United States, 393 U.S. 410 (1969);
 Aguilar v. Texas, 378 U.S. 108 (1964).
- Jones v. United States, 362 U.S. 257, 271 (1960); United States v. Durmings, 425 F.2d 836 (2 Cir. 1969).
- Jones v. United States, supra; United States v. Sultan, 463 F.2d 1006, 1069 (2 Cir. 1972).
- Spinelli v. United States, supra, 393 U.S. at 425 (White, J., concurring); United States v. Kleve, 465 F.2d 187, 192 (8 Cir. 1972); United States v. Smith, 462 F.2d 456, 458-460 (8 Cir. 1972).
 - "Each application for an order authorizing or approving the interception of a wire or oral communication . . . shall include the following information:
 - (b) a full and complete statement of the facts and circumstances relied upon by the applicant, to justify his belief that at order should be issued, including . . . (iv) the identity of the person, if known, committing the offense and whose communications are to be intercepted. . . " 18 U.S.C. § 2518(1)(b)(iv).

- "Each order authorizing or approving the interception of any wire or oral communication shall specify-
 - (a) the identity of the person, if known, whose communications are to be intercepted. . . " 18 U.S.C. 3 2518(4)(c).
- United States v. Chisrizio, 525 F.2d 289 (2 Cir. 1975); United States v. Donovan, 513 F.2d 337, 340-342 (6 Cir. 1975), cert. granted, 44 U.S.L.W. 3462 (U.S. Feb. 23, 1376); United States v. Moore, 513 F.2d 485, 492-494 (D.C. Cir. 1975).
- 9 <u>United States v. Martinez</u>, 498 F.2d 464, 468 (6 <u>Cir. 1974); United States v. Chiarizio</u>, 388 F. Supp. 858, 872, 874 (D. Comm. 1975).
- United States v. Principie, supra, slip opinion at 2394.
- Within a reasonable time but not that than ninety days after . . . the termination of the period of
 an order or extension thereof, the issuing . .
 judge shall cause to be served, on the persons named
 in the order or the application, and such other parties to intercepted communications as the judge may
 determine in his discretion that is in the interest
 of justice, an inventory which shall include notice
 of—
 - (1) the fact of the entry of the order or the application;
 - (2) the date of the entry and the period of authorized, approved or disapproved interception, or the denial of the application; and
 - (3) the fact that during the period wire or oral communications were or were not intercepted." 18 U.S.C. § 2518(8)(d).

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

AFFIDAVIT OF SERVICE

Rule 31

-vs.-

CHARLES P. GREZO, JOSEPH D'AGOSTINO, SAMUEL EBARE and RICHARD MICHAEL BEACH

Defendants-Appellants

STATE OF NEW YORK)
COUNTY OF CAYUGA) SS.:

CARL CANNUCCIARI, being an attorney at law duly admitted to practice in the State of New York and in the United States District Court, Northern District of New York hereby affirms, under the penalties of perjury, that on June 29, 1977, I sent two copies of appellant Richard Michael Beach's brief and appendix on each of the parties in this action by ordinary mail as follows: Hon.

Jeffrey Fisher, United States Attorney, United States Department of Justice, P.O. Box 682, Binghamton, New York 13902; Paul R.

Shanahan, Esq., Onondaga County Savings Bank Building, Syracuse, New York 13202; John R. Rinaldi, Esq., University Building, Syracuse, New York 13202; and Norman A. Palmiere, Esq., Suite 700, 100 E. Main Street, Rochester, New York 14604.

MICHAELS, MICHAELS, WINEBURG, SCOLLAN AND WEINSTEIN ATTORNEYS AT LAW 410 METCALF PLAZA AUBURN, NEW-YORK

Sworn to before me this 29th day of June, 1977.

Notary Public

Netary Public State of Net State of Action in Cayuga County at time of appoint.
No. 1558

Commission expires March 30, 1924

Cannucciari